



**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 REPORT: THE MISSING AND THEIR FAMILIES**

**Summary of the Conclusions arising from Events held prior to the  
International Conference of Governmental and Non-Governmental  
Experts (19-21 February 2003)**

### **Mission statement**

**The aim** is to heighten awareness among governments, the military, international and national organizations – including the worldwide Red Cross and Red Crescent network – and the general public about the tragedy of people unaccounted for as a result of armed conflict or internal violence and about the anguish of their families

**by** creating and making available tools for action and communication

**in order to** ensure accountability on the part of the authorities responsible for resolving the problem of missing people, to better assist the families and to prevent further disappearances.



**ICRC**

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### Abbreviations and definitions

Abbreviation	Meaning
ACHPR	African Charter on Human and Peoples' Rights (1981)
ACHR	American Convention on Human Rights (1969)
AMD	<i>ante mortem</i> data
API	Additional Protocol I of 1977 (Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts of 8 June 1977)
APII	Additional Protocol II of 1977 (Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts of 8 June 1977)
armed conflict(s)	International and/or non-international armed conflict(s) As defined in the Geneva Conventions of 12 August 1949 and their two Additional Protocols of 1977
ASEAN	Association of Southeast Asian Nations
AU/OAU	African Union / Organization of African Unity
CCW	Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (1980)
Conv.	Convention
CTA	Central Tracing Agency
DNA	Deoxyribonucleic acid
DVI	(Interpol) Disaster Victim Identification
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)
ECOSOC	United Nations Economic and Social Council
GCI	First Geneva Convention of 1949 (Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949)
GCII	Second Geneva Convention of 1949 (Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949)
GCIII	Third Geneva Convention of 1949 (Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949)
GCIV	Fourth Geneva Convention of 1949 (Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949)
HRIV	Regulations annexed to the Hague Convention No. IV (1907)
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights (1966)
ICESCR	International Covenant on Economic, Social and Cultural Rights (1966)
ICRC	International Committee of the Red Cross
ID	Identity document(s)
internal violence	Internal disturbances (internal strife) and situations requiring a specifically neutral and independent institution and intermediary In conformity with the <i>Statutes of the International Red Cross and Red Crescent Movement</i> , article 5(2)(d) and 5(3), adopted by the Twenty-fifth International Conference of the Red Cross at Geneva in October 1986 and amended by the Twenty-sixth International Conference of the Red Cross and Red Crescent at Geneva in December 1995
MDM	<i>Médecins du Monde</i>
MSF	<i>Médecins sans Frontières</i>
NATO	North Atlantic Treaty Organisation
NGO	Non-governmental organization(s)
OAS	Organization of American States
OIC	Organization of the Islamic Conference
OSCE	Organization for Security and Co-operation in Europe

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<b>Abbreviation</b>	<b>Meaning</b>
PHR	Physicians for Human Rights
POW	Prisoner(s) of war
RCM	Red Cross Message(s)
Rome Statute	Rome Statute of the International Criminal Court (1998)
SCF	Save the Children Fund
SOP	Standing operating procedure(s)
UN	United Nations
UN GA	United Nations General Assembly
UN SC	United Nations Security Council
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund



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### I. Introduction

Uncertainty about the fate of their relatives is a harsh reality for countless families in armed conflict and internal violence. All around the world, parents, siblings, spouses and children are desperately trying to find lost relatives. Families and communities, not knowing whether their members are alive or dead, are unable to obtain closure on the violent events that have disrupted their lives. Their anxiety remains with them for years after the fighting has subsided and peace returned. They are unable to move on to personal or community rehabilitation and reconciliation. Future generations carry with them the resentment caused by the humiliation and injustice suffered by their relatives and neighbours. Such festering wounds can rot the fabric of society and undermine relations between persons, groups and nations for decades after the actual events.

The relevant State authorities, armed groups and leaders must therefore take action, backed by national and international humanitarian and human rights organizations, to prevent people from going missing and to deal with the consequences when they do. For this, they can choose from a broad spectrum of measures involving persuasion, substitution, denunciation and judicial action. Whenever possible, constructive dialogue must be fostered between all parties - including the families of missing persons and their communities. This is the only means of reducing the number of missing persons and of identifying appropriate measures to be taken in their favour and that of their relatives.

The primary need inevitably cited by the families of missing persons is the right to know what happened to their relatives.

Furthermore, experience shows that the missing person was often the family breadwinner and bore responsibility for administering the family's affairs in the public realm. Hence, while every effort must be made to ascertain the fate of people who are unaccounted for, their relatives must at the same time be provided with the means of living without shame.

The families and communities attach equal importance to the perpetrators of crimes being held accountable for their acts.

At the very least, when all else fails and it proves impossible to account for those who have disappeared in the course of armed conflict or internal violence, for the sake of the families and communities the loss of human lives must be acknowledged and the next-of-kin allowed to honour the memory of the missing in a dignified manner.

In accordance with the mandate conferred on it by the community of States, the ICRC's objectives in armed conflict and internal violence include to ensure that people are protected against threats to their lives, physical integrity and dignity, to prevent disappearances, to restore family ties, and to ascertain the fate of people whose families are without news of them. In most places, however, the ICRC is prevented from fulfilling these objectives by a lack of will on the part of the authorities or the parties concerned. Other governmental and non-governmental organizations working to prevent disappearances, to promote international humanitarian law and international human rights law and to trace missing persons face similar obstacles.

In cooperation with government representatives, other components of the International Red Cross and Red Crescent Movement, international, regional and national governmental and non-governmental organizations, representatives of families of missing persons and a variety of experts, the ICRC therefore launched a process aimed at addressing the plight of people who are unaccounted for as a result of armed conflict or internal violence and of their relatives.

The ICRC's objectives in launching this process in cooperation with all those involved in dealing with the issue are to:

- (a) review all methods of preventing persons from becoming unaccounted for in armed conflict or internal violence and of responding to the needs of families that have lost contact with their relatives;
- (b) agree on common and complementary recommendations and operational practices with all those working to prevent persons from becoming unaccounted for and to respond appropriately when people are missing as a result of armed conflict or internal violence;
- (c) heighten concern about the issue among State authorities, the United Nations and non-governmental organizations.

The ICRC decided to carry out this process in two initial stages.

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The first, which took place between February and mid-December 2002, included three studies entrusted to research institutes, two electronic workshops and six workshops for governmental and non-governmental experts.

These events covered the traditional practices and activities of protection work and restoring family links, the management of human remains, support for the families of missing persons, the collection and management of personal data, and mechanisms for handling cases of missing persons. For each topic, needs and how to meet them were pinpointed, constraints identified, and recommendations and best practices produced. Approximately 120 experts contributed in one way or another to these events. A report is available on each one<sup>1</sup>.

For the second stage of the process, the ICRC has convened governmental and non-governmental experts to an international conference that will take place from 19 to 21 February 2003 in Geneva.

The objective of this report is to summarize for the conference the results of the events that took place during the first stage of the process. The report was drawn up under the ICRC's responsibility in two phases, the experts who took part in the first stage of the process having been invited to comment on an initial draft version in October and November 2002. Except for chapter XII, the present report does not necessarily represent the ICRC position.

The ICRC wishes to express its deep appreciation to all those who took part in the process. This report could not have been drafted without the wealth of experience they contributed and without their commitment.

The ICRC hopes that this report and the conference outcome will be of direct use to:

- a) all the governmental, humanitarian and human rights players engaged in field work in connection with armed conflict or internal violence;
- b) the governments involved in developing international law and preventing or resolving conflicts.

The ICRC will do all in its power to ensure that the outcome of the conference is put into practice for the benefit of missing persons and their families.

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<sup>1</sup> List of reports:

"The legal protection of personal data & human remains, Electronic Workshop, 02.04.2002 - 06.05.2002: Final report and outcome" (ICRC/TheMissing/07.2002/EN/1)

"Member of armed forces and armed groups: identification, family news, killed in action, prevention, Workshop, 06.05.2002 - 07.05.2002, Ecogia ICRC Training Center - Geneva - Switzerland: Final report and outcome" (ICRC/TheMissing/08.2002/EN/2)

"Human remains & forensic sciences, Electronic Workshop, 02.2002 - 03.2002; Human remains: Law, politics & ethics, 23.05.2002 - 24.05.2002 and Human remains: management of remains and of information on the dead, 10.07.2002 - 12.07.2002, Workshops, Ecogia ICRC Training Center - Geneva - Switzerland: Final report and outcome" (ICRC/TheMissing/10.2002/EN/3)

"Support to families of people unaccounted for, Workshop, 10.06.2002 - 11.06.2002, Ecogia ICRC Training Center - Geneva - Switzerland: Final report and outcome" (ICRC/TheMissing/08.2002/EN/4)

"Means to prevent disappearances & to process missing cases, Workshop, 24.07.2002 - 26.07.2002, Ecogia ICRC Training Center - Geneva - Switzerland: Final report and outcome" (ICRC/TheMissing/10.2002/EN/5)

"Mechanisms to solve issues on people unaccounted for, Workshop, 19.09.2002 - 20.09.2002, Ecogia ICRC Training Center - Geneva - Switzerland: Final report and outcome" (ICRC/TheMissing/12.2002/EN/6)

"Mourning process & commemorations, Study - Report and recommendations, Drawn up under the direction of Yvan Droz, Doctor of Ethnology, associate professor at the Geneva Graduate Institute of Development Studies (IUED), In cooperation with Sylvain Froidevaux, Doctor in Social Sciences, commissioned by the IUED" (ICRC/TheMissing/10.2002/EN/7)

"Overcoming the tensions between family needs and judicial procedures - Study - Report and recommendations, by Ms Vasuki Nesiiah, Senior Associate, International Center for Transitional Justice" (ICRC/TheMissing/09.2002/EN/8)

"Study on existing mechanisms to clarify the fate of people unaccounted for - Report and recommendations, by Jean-François Rioux, Professor of conflict studies at Saint-Paul University, Ottawa, Canada and Marco Sassòli, Professor of public international law at the Université du Québec à Montréal, Canada; with the assistance of Mr. Mountaga Diagne and Ms. Marianne Reux, research assistants at the Université du Québec à Montréal" (ICRC/TheMissing/01.2003/EN/9)

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### II. Executive summary

#### 1. General principles

- 1.1 *Missing persons* or *persons unaccounted for* are those whose families are without news of them and/or are reported missing, on the basis of reliable information, owing to armed conflict (international or non-international) or internal violence (internal disturbances (internal strife) and situations requiring a specifically neutral and independent institution and intermediary). The term *family* and *relatives* must be understood in their broadest sense, including family members and close friends, and taking into account the cultural environment.
- 1.2 The type of situation, whether armed conflict or internal violence, should not play a decisive role in determining how to address the issue of missing persons. The determining factor is the cause of the disappearances, which can be due to either disorganization and acts of war or lack of good will on the part of State authorities or armed groups leading to crimes and violations.
- 1.3 The governments and international, regional and local governmental and non-governmental humanitarian and human rights organizations as well as the ICRC should take action to promote and ensure the ratification of or adherence to international humanitarian law and human rights treaties, their implementation in domestic law, respect for their provisions, and adequate instruction in the principles they contain for all State agents and at educational institutions.
- 1.4 War crimes and other crimes under international law must be systematically prosecuted by national or international courts.
- 1.5 The families of missing persons must be recognized as victims of armed conflict or internal violence. Their right to information, accountability and acknowledgment must be upheld. Their most fundamental need is nevertheless for information on the fate of their relatives.
- 1.6 The individual right of family members to know the fate of missing relatives, their whereabouts or, if dead, the circumstances and cause of their deaths, should be explicitly recognized in times of armed conflict and internal violence. The violation of the right to inform relatives of one's whereabouts or of the right of family members to receive information on the fate of relatives missing because of armed conflict or internal violence should be considered a violation of the right to family life. The systematic and/or persistent violation of these rights should be considered cruel or inhuman treatment.
- 1.7 Directly concerned State authorities and the community of States bear primary responsibility for preventing people from becoming unaccounted for and for ascertaining the fate of missing persons. Armed groups also bear a responsibility in this regard. The issue of missing persons, including the specific needs of their families, must be deliberated at donor meetings.
- 1.8 Humanitarian and human rights organizations promote awareness, provide support and act as facilitators. The strategy of these players in a given situation will differ according to the degree of willingness of the State authorities and armed groups and to their resource capacity to implement measures to prevent people from going missing and to ascertain the fate of those who are. It will also depend on each player's mandate, objectives and working methods. Those engaged in a given situation are in all cases accountable to the victims, namely the missing persons and their families; this implies that they must behave ethically.
- 1.9 Any action or activity undertaken to prevent people from becoming unaccounted for and to ascertain the fate of those who are missing must take into account the sensitivities of and be adapted to the cultural and social environment of each context.
- 1.10 Those working with the families of missing persons have a responsibility to train and support their staff.
  - A. Any fieldwork should be preceded by briefings by an expert with local experience, such as an anthropologist, and include information about the society and the cultural and religious aspects of mourning, grief and funeral customs.
  - B. Specific training should be given by professionals to all staff on the psychological reactions trauma victims may suffer, on the risk of secondary trauma for those working with trauma victims and on the means by which staff can protect themselves against secondary traumatization and burnout.
  - C. Teams working with the families of missing persons should be regularly debriefed. All staff should be continuously supervised in the field and provided with ongoing support to help them deal with particular problems arising from their work and to help prevent secondary traumatization and burnout.
  - D. Targeted specific training and support should be provided for staff collecting *ante mortem* data and/or samples for DNA analysis and transmitting information about death to the families.

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### 2. Information management

- 2.1 The collection of accurate information (establishing the facts) is the first step to be taken when addressing any problem; it should never, though, endanger the person collecting the information or the source of the information. Those involved must coordinate their activities and should share information so as to heighten the effectiveness of the action they take to prevent people from becoming unaccounted for and to ascertain the fate of missing persons. This requires the promotion and implementation of standards on the collection and management of information.
- 2.2 Centralization of personal data is essential to increase the possibility of finding a match between tracing requests and available / known information (on displaced persons, refugees, persons deprived of their liberty, dead persons, etc.). The aim over time must therefore be to centralize personal data.
- A. An Information Bureau must be established and operational at the latest by the time the armed conflict breaks out.
- B. Among humanitarian and human rights organizations, the ICRC, when present, is recognized to be the organization best able to centralize personal data collected for humanitarian purposes. However, owing to its mandate and the nature of its modes of action, the ICRC will not provide information for use in criminal investigations.
- 2.3 Information (data and samples) is a powerful tool when used correctly and dangerous when misused. All those involved must therefore work within a framework established in compliance with the legal rules governing the protection of personal data and human remains, including genetic information.

### 3. Prevention

- 3.1 To establish a context in which people are less likely to become unaccounted for, a number of general practical measures must be taken. These include:
- A. establishing control through a strict chain of command within armed and security forces and armed groups in order to ensure that effective supervision is possible;
- B. ensuring that personal identity documents are made easily available to all, that people at risk are registered and that deaths are duly registered;
- C. issuing official regulations on arrest, capture, detention, imprisonment or captivity that meet internationally recognized standards.
- 3.2 Armed groups should be made aware of their obligations under international humanitarian law, including their responsibility regarding violations of the treaty-based and customary provisions of the law.
- 3.3 Armed and security forces / armed groups and military forces serving in peace-keeping and peace-enforcement units must issue and implement, with the required training, directives and instructions based on best-practice guidelines for:
- A. the identification of all members of armed forces / armed groups by means of identity discs as a minimum;
- B. communication between the members of armed forces / armed groups and their relatives, including mail service at least once a month;
- C. ensuring the security and physical integrity of all persons not or no longer participating directly in the hostilities;
- D. ensuring the security and physical integrity of all persons deprived of their liberty;
- E. the proper management of human remains.
- 3.4 The identification of members of armed forces / armed groups is a key means of preventing persons from becoming missing as a result of armed conflict. As an absolute minimum, therefore, all members of armed forces and armed groups should be required to wear identity discs. In some cases, troops do not use proper means of identification for lack of resources, knowledge, or technical and administrative skills. In such cases, the members of organizations such as the AU/OAU, ASEAN, NATO, the OAS, the OIC and the OSCE, or peace, democratization and development organizations, or the ICRC may be able to provide help.
- 3.5 The implementation of the right of families to exchange news is an essential means of preventing people from becoming unaccounted for. The violation of the right to exchange news with relatives should be considered a violation of the right to family life. The systematic and/or persistent violation of this right should be considered cruel or inhuman treatment.

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- 3.6 The Red Cross / Red Crescent family news network is essential and must be supported by all those involved. Other organizations and their means must be seen as being complementary to the network, not as substitutes for it.
- 3.7 Humanitarian organizations must have guaranteed access to the civilian population in all circumstances.
- 3.8 The ICRC or another mechanism must be authorized, in all circumstances and on a regular basis, to visit persons deprived of their liberty for reasons related to armed conflict or internal violence.
- 3.9 Persons who die as a result of armed conflict or internal violence are often listed among the missing because their deaths are not recorded, whether deliberately or not. Providing information on those who die in such situations is thus one way of directly reducing the number of missing persons and ascertaining their fate, thereby alleviating the families' anxiety and putting an end to their uncertainty.

### 4. Processing files on missing persons

- 4.1 It is essential to compile comprehensive files on persons being sought by their families. All those involved must recognize the importance of distinguishing between humanitarian and political issues when processing such files.
- 4.2 Those compiling files on missing persons must share and make known their methods of doing so, their objective(s) and their processing procedures.
- 4.3 All those compiling files must do so on an impartial basis. They must differentiate between facts and presumptions, all of which must be based on sound local knowledge and reflect the reliability of the source of information. The contents of the files must be standardized so that information can be shared and centralized.
- 4.4 The strategy adopted for processing files depends on the situation. During armed conflict and internal violence, the ICRC can play a major role as a neutral, impartial and independent player. In post-conflict / post-violence situations, processing should be enhanced within a framework that takes account in particular of the means of obtaining information on the fate of missing persons, including from perpetrators. Allowance must also be made for all family needs, the role of the judiciary, the need for reconciliation and the need for a mediation process to facilitate access to information.

### 5. Mechanisms for clarifying the fate of missing persons

- 5.1 The State authorities, armed groups and civil society should be made aware that the issue of missing persons must be resolved for the purposes of prevention and so that it does not become a legacy of the armed conflict or situation of internal violence. This calls for the mobilization, for example, of public opinion, the media and leaders, who should be made aware of the problem and of the need for mechanisms, including preventive mechanisms.
- 5.2 The State authorities and armed groups bear primary responsibility for providing information on missing persons. They should be obliged to investigate cases. Criminal procedures should include penalties for non-compliance with court orders pertaining to the disclosure of evidence. The knowing and wilful destruction of evidence should be subject to criminal sanction. International pressure should be used to obtain information from the State authorities and armed groups. The State authorities and armed groups should be held accountable if they impede access to or give inaccurate information.
- 5.3 The issue of missing persons should systematically figure on the international agenda. Peace agreements should systematically include specific mechanisms for clarifying the fate of missing persons; the community of States, international, regional and national governmental and non-governmental organizations and the ICRC should lobby actively to that end. The families constitute a pressure group working to keep the issue on the political agenda, and as such should be given support.
- 5.4 All families need information on the fate of missing relatives; this need is universal. Their needs for accountability and acknowledgement may differ, however, with the context and situation. The mechanisms established should therefore not neglect individual cases. The needs for accountability and acknowledgment should be dealt with in parallel with the need for information; however they may not necessarily be met by formal judicial procedures.
- 5.5 Most situations require the existence of multiple mechanisms (humanitarian, governmental, judicial and non-judicial), with bridges between them, to cover the range of needs experienced by families and communities.
- 5.6 Mechanisms should not be externally imposed; they have to be independent and impartial in outlook and working methods.
  - A. The involvement of international organizations gives them credibility.
  - B. All mechanisms should deal not only with the State authorities but also with armed groups. Human rights mechanisms should be extended to apply to armed groups.

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- C. Mechanisms bringing the (former) warring parties together are useful in the search for missing persons if a third party (such as the ICRC) is actively involved and above all if the parties concerned have a clear political will to find the missing. In the absence of that political will or when the mechanism is used as a smokescreen, the third party should be able to withdraw from the process. It should be ready, however, to help reactivate the mechanism if the parties show tangible signs of renewed political will.
  - D. Information that has been uncovered during a criminal investigation and that can shed light on the fate of a missing person should be provided to the family, in a manner and as soon as compatible with judicial guarantees and effective prosecution.
  - E. Measures such as laws of amnesty, truth commissions or legislation introducing less severe punishment or granting physical protection to perpetrators can prove helpful, provided they make a substantial contribution to establishing the truth. However, amnesties should only be granted to individuals under certain conditions and in accordance with international law.
  - F. Information from third persons might also be helpful (with witness protection programmes).
  - G. Where the judicial system may not be able to handle all cases of missing persons, the implementation of non-judicial mechanisms such as truth commissions should be considered.
  - H. The families attach great importance to the publication of the names and pictures of missing persons, which also constitutes a means of exerting pressure at the political level.
  - I. The mechanisms should also cover State reparations and support for victims / families.
- 5.7 Mechanisms should be complementary; they should coordinate their activities and exchange information on missing persons in compliance with the rules governing the protection of personal data and with their respective mandates. At country level, a central database on all missing persons should be managed by a single agency working with information collected according to an agreed standard.
- 6. Management of information on the dead and of human remains**
- 6.1 The State authorities and armed groups bear primary responsibility for the proper handling of the human remains and for information on the dead.
  - 6.2 Despoliation and desecration of the dead should constitute crimes under international law when committed during non-international armed conflicts (as is the case in international armed conflicts). Intentionally mutilating the remains before their repatriation as part of a widespread and systematic policy should be considered an aggravated form of the crime. Intentionally obstructing, interfering with, or impeding the process of identification of human remains for the purpose of preventing said identification should be punished as a criminal offence under domestic law.
  - 6.3 Where the State authorities and armed groups are unable / unwilling to fulfill their obligations and the dead are not taken care of, humanitarian organizations should address the problem from the outset of the armed conflict or internal violence, with the support of the community of States.
    - A. Information should be systematically collected on graves and on the dead.
    - B. Measures must be taken:
      - a. to collect the dead and to exhume unidentified remains when required and as soon as possible;
      - b. to collect as much information as possible on remains and on the events leading to death;
      - c. to preserve all remains not returned to the families;
      - d. to inform the families when a relative has died, to provide them with death certificates / attestations, and to return any personal effects and, whenever possible, the remains.
  - 6.4 All those involved must work in accordance with best practices while respecting the legal and ethical rules pertaining to the management of personal information and human remains.
  - 6.5 In numerous armed conflicts and situations of internal violence, neither death certificates nor official notifications / confirmations of death are provided, either because the information is simply not available or has been withheld. It is therefore essential to collect information about the dead from direct witnesses. As the witness's account may be the only information on a death that can be transmitted to the deceased's family, the State authorities should issue death certificates on the basis of any such accounts that meet agreed conditions.
  - 6.6 Whenever possible, any procedure involving human remains should be carried out by forensic specialists.
  - 6.7 Because forensic specialists are not always available in the situations under consideration, non-specialists must often be involved, the aim being to maximize the chances of systematic evaluation of the event and identification, even at a later date.

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- 6.8 Armed and security forces, armed groups, military forces serving in peace-keeping and peace-enforcement units, health facilities and humanitarian organizations should adopt best practices to streamline procedures for collecting information on the dead and handling remains. They should train their staff accordingly, with the support of forensic specialists.
- 6.9 In armed conflict and internal violence, forensic specialists should be involved in the process of collecting, exhuming and/or identifying human remains as soon as the need arises.
- 6.10 The involvement of forensic specialists requires an adequate working framework and agreed protocols. Identification for the purposes of informing the family and returning remains is just as important as providing evidence for criminal investigations and constitutes due recognition of the rights of the families. The work of forensic specialists is necessary to ensure both objectives.
- 6.11 Forensic specialists working in contexts involving missing persons must demonstrate a level of professionalism that goes beyond simply assuring standards of practice.
  - A. They must be qualified and competent to work in the situations under consideration.
  - B. They have an ethical obligation actively to advocate an identification process.
  - C. When examining remains, they have an ethical duty to observe and record all information potentially relevant to identification.
  - D. They must not follow procedures that will result in the destruction of material that may be used at a later date.
  - E. They must consider the families' rights and needs before, during and after exhumation.
  - F. They must give consideration to the disposal of unidentified remains in a way appropriate to the context.
  - G. They must be familiar with the pertinent provisions of international humanitarian and human rights law, and should promote the incorporation of those provisions in the basic training of forensic specialists.
  - H. They have a duty to abide by the ethics of their profession and to be aware of the threats they may face in contexts involving missing persons.
- 6.12 The State authorities bear ultimate responsibility for the management, exhumation and identification of human remains. However, in some contexts others may play this role (e.g. international tribunals, UNHCHR or non-governmental organizations) and bring forensic specialists to the area.
- 6.13 All those involved must recognize the role of forensic specialists and the need for a framework, standard guidelines and protocols relating to exhumation, autopsies and identification. This includes the understanding that exhumation and identification comprise the dual objectives of identification and establishing the cause of death; it also includes a commitment to give simultaneous consideration to the family in all matters pertaining to human remains and to ensure that everything possible is done so that the families are informed and supported. These aspects should be reflected in contracts between the forensic specialists and those employing them.
- 6.14 Forensic teams working in the contexts under consideration must be headed by medical practitioners with recognized qualifications and demonstrable skills and experience in forensic pathology.
- 6.15 The production, dissemination and updating of accepted forensic guidelines, standards and protocols, along with the training required to ensure that the work is ethically and well performed, will guarantee that an adequate forensic framework is applied in all the situations under consideration. For this purpose, an international body whose mission statement relates to forensic specialists working in such contexts is needed.
- 6.16 Support must be given to the process of defining standards for exhumation, autopsies and *post* and *ante mortem* data collection and for the development of appropriate software by the forensic working groups convened by the ICRC. In the meantime, the tools available must be adapted and protocols agreed by all those involved in a given context before any exhumation and/or identification process is started.
- 6.17 The approach to the identification of human remains must be adapted to each context and agreed by all those involved before an identification process is started. It must include decisions and protocols regarding the collection of *ante mortem* data and/or samples for DNA analysis, and autopsy and identification protocols. It must be implemented under the responsibility of the head of the forensic team.
- 6.18 DNA analysis must not preclude the use of other objective means of identification. Human remains should be identified by means of DNA typing when other investigative techniques of identification are inadequate. The decision to use DNA analysis should be based on sound scientific and practical considerations within the identification process strategy defined for a given context. Governments, international and regional governmental and non-governmental organizations and the ICRC must take care not to introduce double standards.

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- 6.19 When DNA analysis is deemed necessary for identification:
- A. the techniques used must be feasible and practicable in the given context;
  - B. the techniques used must be reliable and scientifically valid;
  - C. the information technology used to analyse and match DNA samples must be reliable and valid;
  - D. the chain of custody for the collection, storage and transport of samples must be agreed by all those involved;
  - E. the analysis must be performed in certified laboratories that can ensure quality to accredited standards and the handling of human remains, samples and data in agreement with the rules governing the protection of personal data and human remains. Such laboratories must agree to be externally audited.
- 6.20 The communities and the families must be involved in any process to exhume and/or identify human remains. Their involvement should be adapted to the context, and the process must therefore include a communication strategy agreed and implemented by all those involved.
- 6.21 The same holds true for the collection from relatives of *ante mortem* data and/or samples for DNA analysis.
- 6.22 The collection of human remains and the processes of exhumation and identification should only start once a framework for doing so has been agreed by all those involved. This framework must include the relevant protocols, psychological support for the families and organization of the process of *ante mortem* data collection. As a general principle, families should only have to undergo one interview, which may nevertheless be conducted in several stages. Whenever possible, the entire process should be organized for groups of people who went missing under the same circumstances or during the same event and/or whose remains may be expected to be found in the same location, so as to facilitate planning and speed up the process of identification.

## 7. Family support

- 7.1 While they await clarification of their relatives' fate or notification of death, the families of missing persons face specific needs.
- 7.2 The families' specific material, financial, psychological and legal needs must be addressed by the directly concerned State authorities, who bear primary responsibility, with the support of the community of States, of international, regional and national governmental and non-governmental organizations and of the ICRC.
- 7.3 During an emergency phase it may not be possible to address more than the basic needs for food, shelter and physical safety; however, even while the armed conflict or the situation of internal violence is ongoing and as soon as circumstances allow, targeted assistance must be provided to these victims.
- 7.4 Any programme or activity addressing the families' needs should be adapted to local circumstances and aim to promote social reconstruction and reconciliation in the community. Programmes should aim to promote the families' self-sufficiency.
- 7.5 Of special concern in this respect are single heads of family and unaccompanied minors, whose physical safety must be given special attention.
- 7.6 Children whose parents are both unaccounted for need to be protected, and they must be reunited with and cared for by members of their extended family or community. They should be schooled in their own environment.
- 7.7 Programmes providing psychological support and, when necessary, psychiatric treatment for the families of missing persons should be set up with a view to helping the families adapt to their altered situation and come to terms with the events. Such programmes should be built on the local mental health, primary health care and healing systems, in order to be adapted to the cultural context and habits. Those systems must therefore be supported and reinforced.
- 7.8 The State authorities should incorporate into their domestic legislation provisions regarding the legal situation of missing persons and the rights of family members while the person is missing. Matters of concern include the civil status of spouse and children, guardianship and parental authority and the administration of the missing person's estate.
- 7.9 Family networks and associations can play an important role at several levels. They can in particular provide collective support, emphasize the role of the families as the chief activists on the issue of missing persons (and not only as victims) and exert pressure on policymakers.
- 7.10 The development of civil society must be encouraged. In particular, the representative nature, independence and self-sufficiency of family associations and other partners within civil society must be promoted and sustained.



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### 8. Families and death

- 8.1 To show respect for the dead and for local funeral rites is to demonstrate respect for the mourning process, which is essential for peace and social order. To show disrespect for the dead and to prevent funerals and other mourning practices is to make the dead and the living incur a risk.
- 8.2 The State authorities and armed groups must show respect for the dead and for the mourning practices of all communities and individuals in all circumstances. This also applies to all others carrying out activities related to the dead (e.g. transmitting information on death, returning personal effects or human remains, exhuming or identifying human remains, burying human remains, albeit temporarily). All have a responsibility to find out about local practices and to act accordingly.
- 8.3 The cultural identity of refugees and displaced persons should be respected at all times; this includes giving refugees and displaced persons the opportunity to hold funerals and commemorative services in keeping with their culture.
- 8.4 The only prerequisite to mourning is the belief that the missing person is dead. Until adequate proof of death can be provided, relatives of missing persons cannot mourn and may experience feelings of guilt. A death certificate alone might not be enough to induce belief in the death of a missing person. The State authorities that issue death certificates have a responsibility, as does the ICRC when it delivers information on death, to ensure the authenticity of the information contained therein; the certificates should include information on the cause of death and the availability of the human remains.
- 8.5 The process of informing the families about the death of a relative and of returning personal effects or human remains must be well prepared.
- 8.6 Commemorations play an important role for the families of missing persons. They should be supported, but their planning and organization should be under the control of the families and communities concerned.

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### III. International law

#### 9. Foreword

- 9.1 International humanitarian law and international human rights law are concurrently applicable in armed conflicts. Human rights treaties apply at all times and in all circumstances to all persons subject to the jurisdiction of a State party. They therefore continue to apply in times of armed conflict, except to the extent that a State party may have legitimately derogated from some of its obligations under a treaty. Stringent conditions must be met for a derogation to be legitimate. International humanitarian law is applicable in situations of armed conflict and is non-derogable.
- 9.2 In order to spare the reader unnecessary repetition, the provisions of international human rights law are cited as references only in respect of the rules applicable in internal violence; only those provisions that specifically mention armed conflicts or refer to a non-derogable obligation are cited as references in respect of the rules applicable in international and non-international armed conflicts.
- 9.3 Neither this list of international humanitarian law rules applicable in armed conflicts nor that of the international human rights rules applicable in internal violence is by any means exhaustive.
- 9.4 The legal references referred to in parentheses in **10**, **11** and **12** below are listed in **Annex A**.
- 9.5 The additional references in Annex A and Annex B are provided only as a general guide and do not constitute an exhaustive list.
- 9.6 ***Italic bold subtitles*** have been inserted at **10**, **11** and **12** for the reader's comfort.

#### 10. International law applicable in international armed conflicts

- 10.1 The State Parties undertake to respect and ensure respect for the Geneva Conventions and Additional Protocol I in all circumstances, and, in situations of serious violations of the Geneva Conventions or Additional Protocol I, the State Parties undertake to act, jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter. (1)
- 10.2 ***Knowing the fate of relatives***
- 10.3 Families have the right to know the fate of their relatives. (2)
- 10.4 Each party to the conflict must take all feasible measures to account for persons reported missing as a result of an armed conflict. (3)
- 10.5 ***General protection***
- 10.6 All protected persons have the right to respect for their family life. (4)
- 10.7 The life of every combatant *hors de combat* and civilian must be respected and protected. (5)
- 10.8 Whenever circumstances permit, and particularly after an engagement, all possible measures must be taken, without delay, to search for and collect the wounded, sick and shipwrecked, without adverse distinction. (6)
- 10.9 Every combatant *hors de combat* and civilian must be treated humanely. (7)
- 10.10 Torture and other cruel, inhuman or degrading treatment or punishment are prohibited. (8)
- 10.11 Hostage-taking is prohibited. (9)
- 10.12 The arbitrary deprivation of liberty is prohibited. (10)
- 10.13 Enforced disappearance is prohibited. (11)
- 10.14 Discrimination based on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria is prohibited. (12)
- 10.15 Everyone has the right to a fair trial by an independent, impartial and regularly constituted court respecting all internationally recognized judicial guarantees. (13)
- 10.16 Without prejudice to more favourable treatment, neutral States must apply by analogy the relevant provisions of the four Geneva Conventions and Additional Protocol I to protected persons they receive or intern in their territory. (14)

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- 10.17 Each party to the conflict must allow the free passage of and not arbitrarily impede the delivery of relief supplies of an exclusively humanitarian nature intended for civilians in need in areas under its control; humanitarian relief personnel must have the freedom of movement essential to guarantee the exercise of their functions, unless imperative military reasons so demand. (15)
- 10.18 **Conduct of hostilities**
- 10.19 The parties to the conflict must at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly must direct their operations only against military objectives. (16)
- 10.20 Indiscriminate attacks are prohibited. (17)
- 10.21 In the conduct of military operations, precautions in attack and against the effects of attack must be taken to spare the civilian population, civilians and civilian objects. (18)
- 10.22 Combatants *hors de combat* and civilians must not be used to shield military operations. (19)
- 10.23 **Protection of civilians**
- 10.24 The parties to the conflict must not order the displacement of or forcibly displace the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand and then only for the time necessary; civilians thus evacuated must be transferred back to their homes as soon as hostilities in the area in question have ceased. (20)
- 10.25 Where displacement occurs, the basic needs of the civilian population must be met, its security ensured and family unity maintained. (21)
- 10.26 The voluntary and safe return and reintegration of displaced persons must be facilitated. (22)
- 10.27 Returned displaced persons must not be discriminated against. (23)
- 10.28 The transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory is prohibited. (24)
- 10.29 Women, the elderly and the disabled affected by armed conflict are entitled to special protection. (25)
- 10.30 Children affected by armed conflict are entitled to special protection. (26) (See 14 below.)
- 10.31 **Protection of protected persons deprived of their liberty for reasons related to the conflict**
- 10.32 The personal data of protected persons deprived of their liberty for reasons related to the conflict must be recorded. (27)
- 10.33 The information recorded on protected persons deprived of their liberty for reasons related to the conflict must be of such a character as to make it possible to identify the person exactly and to advise the next-of-kin quickly. (28)
- 10.34 Internment of civilians (29)
- A. Protected persons on the territory of a party to the conflict may be interned or placed in assigned residence only if the security of the Detaining Power makes this absolutely necessary. This action must be reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose; if internment or placing in assigned residence is maintained, the court or administrative board must review the action periodically, and at least twice yearly, with a view to the favourable amendment of the initial decision, if circumstances permit. (30)
- B. If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment. Decisions regarding such assigned residence or internment must be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of GCIV, including the right of appeal. The appeal must be decided with the least possible delay and, if the decision is upheld, it must be subject to periodic review, if possible every six months. (31)
- C. Protected persons who commit an offence which is solely intended to harm the Occupying Power, but which does not constitute an attempt on the life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them, shall be liable to internment or simple imprisonment, provided the duration of interment or imprisonment is proportionate to the offence committed. (32)
- D. Each interned protected person must be released by the Detaining Power as soon as the reasons which necessitated his/her internment no longer exist. (33)
- 10.35 Interned members of the same family must be lodged together in the same place of internment. (34)

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- 10.36 Women deprived of their liberty must be separated from detained men, unless they are members of the same family, and must be guarded by women. (35)
- 10.37 Every civilian internee must be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible. (36)
- 10.38 Accused prisoners of war, accused persons in occupied territory, and accused civilian internees must be allowed to receive visits from their legal counsel. (37)
- 10.39 The ICRC must be granted access to all protected persons deprived of their liberty for reasons related to the conflict. (38)
- 10.40 Protected persons deprived of their liberty for reasons related to an international armed conflict must be released and repatriated in accordance with the Geneva Conventions. (39)
- 10.41 ***Communication between family members***
- 10.42 All persons in the territory of a party to the conflict, or in a territory occupied by it, shall be enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them. This correspondence shall be forwarded speedily and without undue delay. (40)
- 10.43 Prisoners of war and civilian internees must be allowed to send and receive letters and cards; the censoring of correspondence addressed to prisoners of war or civilian internees or dispatched by them must be done as quickly as possible and only by the appropriate authorities. (41)
- 10.44 Correspondence addressed to prisoners of war or civilian internees or dispatched by them through the post office, either direct or through the Information Bureaux, must be exempt from any postal dues. (42)
- 10.45 Should military operations prevent the Powers concerned from fulfilling their obligation to ensure the conveyance of mail and relief shipments, the Protecting Power, the ICRC, or any other organization duly approved by the parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means. (43)
- 10.46 ***Treatment of the dead and graves***
- 10.47 Whenever circumstances permit, and particularly after an engagement, all possible measures must be taken, without delay, to search for and collect the dead, without adverse distinction. (44)
- 10.48 Each party to the conflict must treat the dead with respect and dignity and prevent their being despoiled. (45)
- 10.49 Each party to the conflict must take measures to identify the dead before disposing of their remains. (46)
- 10.50 The dead must be disposed of in a respectful manner and their graves respected. (47)
- 10.51 Burial should be in individual graves, unless unavoidable circumstances require the use of collective graves. All graves must be marked. (48)
- 10.52 Each party to the conflict must take all possible measures to provide information to the appropriate authorities or to the family of the deceased regarding the deceased's identity, location and cause of death. (49)
- 10.53 Each party to the conflict must endeavour to facilitate the return of the deceased's remains and personal effects to the home country at its request or at the request of the next-of-kin. (50)
- 10.54 ***Collecting and forwarding information***
- 10.55 Upon the outbreak of a conflict and in all cases of occupation, each party to the conflict must establish an official Information Bureau:
- A. to centralize, without adverse distinction, all information on the wounded, sick, shipwrecked, dead, protected persons deprived of their liberty, children whose identity is in doubt and persons who have been reported missing and to provide this information to the appropriate authorities, through the intermediary of the Protecting Powers and likewise of the ICRC Central Tracing Agency (51);
  - B. to be responsible for replying to all enquiries concerning protected persons and for making any enquiries necessary to obtain information which is asked for if this is not in its possession (52);
  - C. to act as an intermediary for the free transport of matter, including correspondence, sent to and by protected persons (and whenever requested through the ICRC Central Tracing Agency) (53).
- 10.56 Information recorded on protected persons deprived of their liberty or on deceased persons must be of such a character as to make it possible to identify the person exactly and to advise the next-of-kin quickly. (54)

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- 10.57 Each party to the conflict must furnish the persons under its jurisdiction liable to become prisoners of war with an identity card showing (55):
- A. full name,
  - B. rank, army, regimental, personal or serial number or equivalent information,
  - C. date of birth.
- 10.58 Medical and religious personnel must carry a special identity card embossed with the stamp of the military authority showing (56):
- A. the distinctive emblem;
  - B. full name;
  - C. rank and service number;
  - D. date of birth;
  - E. the capacity in which she/he is entitled to protection;
  - F. photograph;
  - G. signature and/or fingerprints.
- 10.59 Within the shortest possible period, each of the parties to the conflict must transmit to the Information Bureau the following information, when available, on each **prisoner of war** (and medical and religious personnel) (57):
- A. full name;
  - B. rank, army, regimental, personal or serial number;
  - C. place and date of birth;
  - D. indication of the Power on which the POW depends;
  - E. first name of father;
  - F. maiden name of mother;
  - G. name and address of the person to be informed;
  - H. address to which correspondence may be sent to the POW;
  - I. information regarding transfers, releases, repatriations, escapes, admissions to hospital and death;
  - J. if the POW is seriously ill or wounded, the state of health (to be supplied regularly, every week if possible).
- 10.60 Within the shortest possible period, each of the parties to the conflict must transmit to the Information Bureau at least the following information on other **protected persons deprived of their liberty** for reasons related to the conflict (58):
- A. full name;
  - B. place and date of birth,;
  - C. nationality;
  - D. last known place of residence;
  - E. distinguishing characteristics;
  - F. first name of father;
  - G. maiden name of mother;
  - H. date, place, and nature of the action taken with regard to the individual;
  - I. address at which correspondence may be sent to the person deprived of liberty;
  - J. name and address of the person to be informed;
  - K. information regarding transfers, releases, repatriations, escapes, admissions to hospital and death;
  - L. if the protected person deprived of their liberty is seriously ill or wounded, the state of health (to be supplied regularly, every week if possible).

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- 10.61 Within the shortest possible period, each of the parties to the conflict must transmit to the Information Bureau the following information, when available, on each **wounded, sick, shipwrecked or dead person** (59):
- A. full name;
  - B. army, regimental, personal or serial number;
  - C. date of birth;
  - D. any other particulars figuring on the identity card or disc;
  - E. date and place of capture or death;
  - F. particulars concerning wounds or illnesses, or cause of death.
- 10.62 In case of **death**, the following must be collected and transmitted to the Information Bureau with (60):
- A. date and place of (capture and) death;
  - B. particulars concerning wounds / illnesses or cause of death;
  - C. all other personal effects;
  - D. date and place of burial with particulars to identify the grave,
  - E. when applicable, half of the identity disc must remain with the body and the other half transmitted.
- 10.63 At the commencement of hostilities, the parties to the conflict must establish an official **Graves Registration Service** to see to the dead, including burials, and to record the particulars for identification of graves and those there interred. (61)
- 10.64 The authorities of the party to the conflict arranging for the **evacuation of children to a foreign country**, and, as appropriate, the authorities of the receiving country must establish for each child a card with photographs, which they must send to the ICRC Central Tracing Agency. Each card must bear, whenever possible and whenever it involves no risk of harm to the child, the following information (62):
- A. full name;
  - B. sex;
  - C. the place and date of birth (or, if that date is not known, the approximate age);
  - D. father's full name;
  - E. mother's full name and maiden name;
  - F. next-of-kin;
  - G. nationality;
  - H. native language, and any other language spoken by the child;
  - I. address of the child's family;
  - J. any identification number attributed to the child;
  - K. state of health;
  - L. blood group;
  - M. any distinguishing features;
  - N. date on which and place where the child was found;
  - O. date on which and place from which the child left the country;
  - P. religion, if any;
  - Q. present address in the receiving country;
  - R. should the child die before returning, the date, place and circumstances of death and the place of interment.
- 10.65 Information the transmission of which might be detrimental to the person concerned or to his or her relatives must be forwarded to the ICRC Central Tracing Agency only. (63)
- 10.66 The Information Bureau and the ICRC Central Tracing Agency must enjoy free postage for all mail and, as far as possible, exemption from telegraphic charges or, at least, greatly reduced rates. (64)

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### 10.67 *Customary international law*

10.68 Whereas the customary law status of rule **10.64** is uncertain at the time of writing, all other rules mentioned above are widely recognized as representing customary international law applicable in international armed conflicts (**10.1 to 10.63** and **10.65, 10.66**).

## 11. **International law applicable in non-international armed conflicts**

### 11.1 *General protection*

11.2 All persons have the right to respect for their family life. (65)

11.3 The life of every person not or no longer directly participating in the hostilities must be respected and protected. (66)

11.4 Whenever circumstances permit, and particularly after an engagement, all possible measures must be taken, without delay, to search for and collect the wounded, sick and shipwrecked, without adverse distinction. (67)

11.5 Every person not or no longer directly participating in the hostilities must be treated humanely. (68)

11.6 Torture and other cruel, inhuman or degrading treatment or punishment are prohibited. (69)

11.7 Hostage-taking is prohibited. (70)

11.8 Discrimination based on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria is prohibited. (71)

11.9 Everyone has the right to a fair trial by an independent, impartial and regularly constituted court respecting all internationally recognized judicial guarantees. (72)

11.10 Each party to the conflict must allow the free passage of and not arbitrarily impede the delivery of relief supplies of an exclusively humanitarian nature intended for civilians in need in areas under its control; humanitarian relief personnel must have the freedom of movement essential to guarantee the exercise of their functions, unless imperative military reasons so demands. (73)

### 11.11 *Conduct of hostilities*

11.12 The parties to the conflict must at all times distinguish between the civilian population and persons participating directly in the hostilities and between civilian objects and military objectives and accordingly must direct their operations only against military objectives. (74)

11.13 Indiscriminate attacks are prohibited. (75)

11.14 In the conduct of military operations, precautions in attack and against the effects of attack must be taken to spare the civilian population, civilians and civilian objects. (76)

11.15 Persons not or no longer directly participating in the hostilities must not be used to shield military operations. (77)

### 11.16 *Protection of civilians*

11.17 The parties to the conflict must not order the displacement of or forcibly displace the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand and then only for the time necessary. (78)

11.18 Where displacement occurs, the basic needs of the civilian population must be met, its security ensured and family unity maintained. (79)

11.19 Children affected by armed conflict are entitled to special protection. (80) (See **15** below.)

### 11.20 *Protection of persons deprived of their liberty for reasons related to the conflict*

11.21 Women deprived of their liberty must be separated from detained men, unless they are members of the same family, and must be guarded by women. (81)

11.22 The ICRC should be granted access to all persons deprived of their liberty for reasons related to the conflict. (82)

11.23 At the end of hostilities, the authorities in power must endeavour to grant the broadest possible amnesty to persons who participated in the armed conflict or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained. (83)

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### 11.24 **Communication between family members**

11.25 Persons deprived of their liberty for reasons related to the armed conflict must be allowed to send and receive letters and cards, the number of which may be limited by competent authority if it deems necessary. (84)

### 11.26 **Treatment of the dead and graves**

11.27 Whenever circumstances permit, and particularly after an engagement, all possible measures must be taken, without delay, to search for and collect the dead, without adverse distinction. (85)

11.28 Each party to the conflict must treat the dead with respect and dignity and prevent their being despoiled. (86)

11.29 The dead must be disposed of in a respectful manner and their graves respected. (87)

### 11.30 **Customary international law**

11.31 It is widely recognized that, in addition to rules 11.2 to 11.23, 11.25 and 11.27 to 11.29, rules 10.1, 10.3, 10.4, 10.12, 10.13, 10.26, 10.27, 10.29, 10.32, 10.49, 10.51 and 10.52 also represent customary international law applicable *mutatis mutandis* in non-international armed conflicts.

## 12. **International law applicable in internal violence**

### 12.1 **General protection**

12.2 All persons have the right to respect for their family life. (88)

12.3 The arbitrary deprivation of life is prohibited. (89)

12.4 All persons must be treated with humanity and with respect for the inherent dignity of the human person. (90)

12.5 All persons have a right to adequate food, clothing and housing and to the enjoyment of the highest attainable standard of physical and mental health. (91)

12.6 Torture and other cruel, inhuman or degrading treatment or punishment is prohibited. (92)

12.7 Hostage-taking is prohibited. (93)

12.8 Everyone has the right to liberty and security of person; the arbitrary deprivation of liberty is prohibited. (94)

12.9 *Incommunicado* detention or detention in a secret location is prohibited. (95)

12.10 Enforced disappearance is prohibited. (96)

12.11 Discrimination based on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria is prohibited. (97)

12.12 Everyone has the right to a fair trial by an independent, impartial and regularly constituted court respecting all internationally recognized judicial guarantees. (98)

### 12.13 **Protection of the population**

12.14 The deportation or forcible transfer of any civilian population committed as part of a widespread or systematic attack directed against that population, with knowledge of the attack, is prohibited. (99)

12.15 All persons have the right to leave any country, including their own, and to return to their country. (100)

12.16 The principle of *non-refoulement* must be respected. (101)

12.17 Returned displaced persons must not be discriminated against. (102)

12.18 Children are entitled to special protection. (103) (See 16 below.)

### 12.19 **Protection of persons deprived of their liberty**

12.20 Official up-to-date registries of persons deprived of their liberty must be established and maintained and, in accordance with domestic law, must be made available to relatives, judges, attorneys, any other person having a legitimate interest and other authorities. (104)

12.21 Persons deprived of their liberty should be allowed to receive visitors. (105)

### 12.22 **Communication between family members**

12.23 All persons have the right to correspond with members of their families. (106)



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### 13. Special protection to which children are entitled

13.1 The legal references for 14, 15 and 16 below are listed in Annex B.

### 14. Special protection to which children are entitled: international law applicable in international armed conflicts

- 14.1 Children are protected by GCIV relative to the protection of civilian persons in time of war and API; they are protected by the fundamental guarantees that these treaties provide, in particular the right to life, the prohibitions on corporal punishment, torture, collective punishment and reprisals (1), and by the rules of API on the conduct of hostilities, including both the principle that a distinction must be made between civilians and combatants and the prohibition on attacks against civilians (2).
- 14.2 Children affected by armed conflict are entitled to special protection. GCIV guarantees special care for children, but it is API that lays down the principle of special protection: "Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason". (3) The provisions setting out this protection are summarized in the rules that follow.
- 14.3 Evacuation, special zones: evacuation must be temporary and only arranged where compelling reasons of health or medical treatment of the child so require or from areas of combat for safety reasons; special zones may be established by the parties in order to protect from the effects of war children under 15, expectant mothers and mothers of children under 7. (4)
- 14.4 Assistance and care: children must be given priority access to food and health care; children under 15 years of age must be given additional food, in proportion to their physiological needs. (5)
- 14.5 Education and cultural environment: the education of children must be facilitated and their cultural environment preserved. (6)
- 14.6 Identification, family reunification and unaccompanied children:
- A. The parties to the conflict must endeavour to arrange for all children under 12 to be identified by the wearing of identity discs, or by some other means. (7)
  - B. The parties to the conflict must take the necessary measures to ensure that children under 15, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances and as far as possible entrusted to persons of a similar cultural tradition. (8)
  - C. All protected persons have the right to correspond with members of their families. (9)
  - D. Each party to the conflict must facilitate enquiries made by the members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible. (10)
  - E. Where displacement occurs, the basic needs of the population must be met, its security ensured and family unity maintained. (11)
  - F. Information on unaccompanied children and children who have been separated from their families must be centralized and provided to the ICRC Central Tracing Agency. (12)
- 14.7 Arrested, detained or interned children:
- A. Proper regard must be paid to the special treatment due to minors. (13)
  - B. If arrested, detained or interned for reasons related to the conflict, children must be held in quarters separate from those of adults, except where families are accommodated as family units. (14)
  - C. The cases of pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict must be considered with the utmost priority. (15)
- 14.8 Exemption from the death penalty: the death penalty for an offence related to the armed conflict must not be carried out on persons who had not attained the age of 18 years at the time the offence was committed. (16)

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- 14.9 Recruitment and participation in hostilities:
- A. Conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities is prohibited. (17)
  - B. If, in exceptional cases, children who have not attained the age of 15 years take a direct part in hostilities and fall into the power of an adverse party, they continue to benefit from the special protection accorded by international humanitarian law, whether or not they are prisoners of war. (18)
  - C. In recruiting among persons who have attained the age of 15 years but not the age of 18 years, priority should be given to those who are oldest. (19)
  - D. States must take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities. (20)
  - E. Children under the age of 18 must not be compulsorily recruited into the armed forces. (21)
  - F. States that permit voluntary recruitment into their national armed forces under the age of 18 years must maintain safeguards to ensure, as a minimum, that:
    - a. such recruitment is genuinely voluntary;
    - b. such recruitment is carried out with the informed consent of the person's parents or legal guardians;
    - c. such persons are fully informed of the duties involved in such military service;
    - d. such persons provide reliable proof of age prior to acceptance into national military service. (22)
  - G. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years. (23)
- 14.10 All protected persons have the right to respect for their family life. (24)
- 14.11 It is widely recognized that rules **14.1 to 14.8**, **14.9A**, **14.9B** and **14.10** represent **customary international law** applicable in international armed conflicts.
- 15. Special protection to which children are entitled: international law applicable in non-international armed conflicts**
- 15.1 Children are covered by the fundamental guarantees for persons not or no longer directly participating in hostilities (25); they are further protected by the principle that "the civilian population as such, as well as individual civilians, shall not be the object of attack". (26)
- 15.2 Children affected by armed conflict are entitled to special protection: "Children shall be provided with the care and aid they require . . .". (27) The provisions setting out this protection are summarized in the rules that follow.
- 15.3 Evacuation, special zones: measures must be taken, if necessary and whenever possible with the consent of their parents or persons who are responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country. (28)
- 15.4 Assistance and care: children must be provided with the care and aid they require. (29)
- 15.5 Identification, family reunification and unaccompanied children: all appropriate steps must be taken to facilitate the reunion of families temporarily separated. (30)
- 15.6 Where displacement occurs, the basic needs of the population must be met, its security ensured and family unity maintained. (31)
- 15.7 Education, cultural environment: children must receive an education, including religious and moral education. (32)
- 15.8 Exemption from the death penalty: the death penalty may not be pronounced on persons who were under the age of 18 years at the time of the offence and may not be carried out on pregnant women or mothers of young children. (33)

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- 15.9 Recruitment and participation in hostilities:
- A. Conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities is prohibited. (34)
  - B. The special protection provided by international humanitarian law to children who have not attained the age of 15 years remains applicable to them if they take a direct part in hostilities. (35)
  - C. In recruiting among persons who have attained the age of 15 years but not the age of 18 years, priority should be given to those who are oldest. (36)
  - D. States must take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities. (37)
  - E. Children under the age of 18 must not be compulsorily recruited into the armed forces. (38)
  - F. States that permit voluntary recruitment into their national armed forces under the age of 18 years must maintain safeguards to ensure, as a minimum, that:
    - a. such recruitment is genuinely voluntary;
    - b. such recruitment is carried out with the informed consent of the person's parents or legal guardians;
    - c. such persons are fully informed of the duties involved in such military service;
    - d. such persons provide reliable proof of age prior to acceptance into national military service. (39)
  - G. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years. (40)
- 15.10 All persons have the right to respect for their family life. (41)
- 15.11 It is widely recognized that, in addition to rules **15.1 to 15.7**, **15.9A**, **15.9B** and **15.10**, rules **14.6C** and **14.7B** also represent **customary international law** applicable *mutatis mutandis* in non-international armed conflicts.
- 16. Special protection to which children are entitled: international law applicable in internal violence**
- 16.1 Children are entitled to special protection. (42)
- 16.2 Everyone has the right to education. (43)
- 16.3 Arrested, detained or interned children:
- A. Every child deprived of liberty must be separated from adults unless it is considered in the child's best interest not to do so. (44)
  - B. Juvenile offenders must be accorded treatment according to their age and legal status. (45)
- 16.4 Sentence of death must not be imposed for crimes committed by persons below the age of 18 years. (46)
- 16.5 All persons have the right to correspond with members of their families. (47)
- 16.6 All persons have the right to respect for their family life. (48)
- 16.7 Recruitment:
- A. Conscripting or enlisting children under the age of 15 years into the national armed forces is prohibited. (49)
  - B. In recruiting among persons who have attained the age of 15 years but not the age of 18 years, priority should be given to those who are oldest. (50)
  - C. Children under the age of 18 must not be compulsorily recruited into the armed forces. (51)
  - D. States that permit voluntary recruitment into their national armed forces under the age of 18 years must maintain safeguards to ensure, as a minimum, that:
    - a. such recruitment is genuinely voluntary;
    - b. such recruitment is carried out with the informed consent of the person's parents or legal guardians;
    - c. such persons are fully informed of the duties involved in such military service;
    - d. such persons provide reliable proof of age prior to acceptance into national military service. (52)

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- 16.8 States that recognize and/or permit the system of adoption must ensure that the best interests of the child must be the paramount consideration and they must:
- A. ensure that adoption is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
  - B. recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster home or with an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
  - C. ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
  - D. take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
  - E. promote, where appropriate, the above objectives by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs. (53)

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### IV. Recommendations for the reaffirmation and development of international law

#### 17. Foreword

17.1 The following recommendations, for incorporation into binding universal international instruments, are based on treaty and non-treaty rules and standards. **They should be read in relation to chapter III.** They focus on the rules and standards drawn up to prevent people from becoming unaccounted for and to ascertain the fate of missing persons; they are therefore not exhaustive with regard to the general development of rules and standards applicable in armed conflict and internal violence.

#### 18. Knowing the fate of relatives

##### 18.1 Rights to be protected

- A. All family members have the right to know the fate of relatives missing because of armed conflict or internal violence, including their whereabouts or, if dead, the circumstances and cause of their deaths.
- B. All persons deprived of their liberty for reasons related to armed conflict or internal violence have the right to inform their relatives - or any other person of their choice - of their whereabouts, arrest, address and state of health.
- C. All effective legislative, administrative, judicial or other measures, including penal sanctions in appropriate cases, should be taken to ensure respect of these rights.
- D. No individual should be punished for maintaining private or personal contacts with relatives, or for inquiring about the fate or whereabouts of a relative, whatever the nature of the act, including criminal acts and acts against State security, that relative may have or is suspected of having committed.

##### 18.2 State responsibility

- A. The violation of the right of family members to receive information on the fate of relatives missing because of armed conflict or internal violence, including their whereabouts or, if dead, the circumstances and cause of their deaths, should be considered a violation of the right to family life.
- B. The violation of the right to inform relatives or another person of one's whereabouts, arrest, address and state of health, should be considered a violation of the right to family life.
- C. The systematic and/or persistent violation of these rights should be considered cruel or inhuman treatment.

#### 19. General protection

##### 19.1 The duty to establish a responsible command

- A. In non-international armed conflicts, all armed forces / armed groups participating in the hostilities should be subordinate to a command responsible to one of the parties to the conflict.
- B. In situations of internal violence, the State authorities should ensure that commanders and/or superiors prevent and where necessary suppress and report to the competent authorities breaches of the applicable rules of conduct and engagement committed by arms carriers under their command or authority.

##### 19.2 The duty to suppress violations and to establish an internal disciplinary system

- A. All necessary measures should be taken to prevent and punish enforced disappearances.
- B. Armed groups should be organized and subject to an appropriate internal disciplinary system with a view to enforcing the rules of international humanitarian law.
- C. The following principles should be explicitly recognized:
  - a. any person, whatever his/her quality or rank, must be held accountable for offences that he/she committed or ordered to be committed;
  - b. combatants / arms carriers have a duty not to carry out manifestly unlawful orders.

##### 19.3 The duty to spread knowledge of international humanitarian law and international human rights law

- A. The training of law enforcement personnel and officials should include the necessary education concerning the offence of enforced disappearance.
- B. Members of the armed forces and the civilian population should receive the necessary education in international human rights law, in addition to the education in international humanitarian law.

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- 19.4 **The rules and principles applied in respect of the use of force by law enforcement officials, arrest, detention and imprisonment should be based *inter alia* on the following texts:**
- A. the Code of Conduct for Law Enforcement Officials (1979);
  - B. the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990);
  - C. the Standard Minimum Rules for the Treatment of Prisoners (1955);
  - D. the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988);
  - E. the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989);
  - F. the Basic Principles for the Treatment of Prisoners (1990);
  - G. the Basic Principles on the Role of Lawyers (1990);
  - H. the Guidelines on the Role of Prosecutors (1990);
  - I. the Basic Principles on the Independence of the Judiciary (1985);
  - J. the UN Declaration on the Protection of All Persons from Enforced Disappearances (1992);
  - K. the Inter-American Convention on Forced Disappearance of Persons (1994);
  - L. the Safeguards guaranteeing protection of the rights of those facing the death penalty (1984).

## 20. Use of force by law enforcement officials

- 20.1 In order to prevent persons from becoming unaccounted for, the following principles should be respected *inter alia*:
- A. law enforcement officials, including military or State security officers exercising police powers, should use force only when strictly necessary and to the extent required for the performance of their duty;
  - B. intentional lethal use of firearms may only be made when strictly unavoidable in order to protect human life;
  - C. whenever the lawful use of force and firearms is unavoidable:
    - a. assistance and medical aid should be rendered to any injured or affected persons at the earliest possible moment;
    - b. relatives of or other persons having close relationships with the injured or affected person should be notified at the earliest possible moment;
  - D. rules and regulations on the use of firearms by law enforcement officials should include guidelines:
    - a. ensuring that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
    - b. regulating the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
    - c. providing for a system of reporting whenever law enforcement officials use firearms in the performance of their duty;
  - E. in situations of internal violence, an effective official investigation into the circumstances of death should be undertaken when any person is killed or appears to have been killed as a result of the use of force by agents of the State.

## 21. Protection of persons deprived of their liberty

- 21.1 In order to prevent persons from becoming unaccounted for, the following rights should be explicitly recognized in respect of any persons deprived of their liberty for reasons related to non-international armed conflict or internal violence, *inter alia*:
- A. the right not to be held in secret places or *incommunicado*;
  - B. the right to inform, or require the competent authorities to notify, a relative or any other person of their choice of their arrest, address and state of health;
  - C. the right to the assistance of a defence counsel of their choice;
  - D. the right to request and receive a medical examination and health care.

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### 22. Communication between family members

#### 22.1 Right to exchange news

- A. All persons affected by armed conflict or internal violence, including persons deprived of their liberty for reasons related to the conflict or the situation, have the right to exchange news with their families - or other persons with whom they have close relationships - wherever their families may be.
- B. All effective legislative, administrative, judicial or other measures, including penal sanctions in appropriate cases, should be taken to ensure respect of the right to exchange news.

#### 22.2 State responsibility

- A. The violation of the right to exchange news with relatives or other persons with whom there is a close relationship should be considered a violation of the right to family life.
- B. The systematic and/or persistent violation of this right should be considered cruel or inhuman treatment.

#### 22.3 Exemption from communication charges

- A. Exemption from charges for communications intended for or dispatched by persons deprived of their liberty
  - a. The exemption from charges for the correspondence of prisoners of war and civilian internees should be extended to any other means of communication available.
  - b. In non-international armed conflicts and situations of internal violence, communications should be exempt from all charges, or at least charged at a preferential rate.
- B. Exemption from charges for the ICRC
  - a. The exemption from charges for the correspondence of prisoners of war and civilian internees should be extended to any other means of communication available.
  - b. In non-international armed conflicts and situations of internal violence, communications sent via the ICRC should be exempt from all charges, or at least charged at a preferential rate.

#### 22.4 Contacts between members of armed or security forces and their relatives

- A. Members of armed or security forces, including those involved in peace-keeping or peace-enforcement operations, should be able to maintain contact with their relatives.
- B. Implementing measures should provide that:
  - a. contact between members of the armed or security forces and their relatives is allowed and made possible at least once a month under any circumstances;
  - b. the communications are free of charge, or at least no more costly than internal communications.

### 23. Treatment of the dead and graves and identification of human remains

23.1 In armed conflict and internal violence, the remains of the dead and their personal effects should be returned to the other party or to the families on request.

23.2 In armed conflict and internal violence, the principles regarding exhumations and *post mortem* examinations set forth below should be respected *inter alia*.

- 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. The families should be kept informed of the decisions taken in relation to exhumations and *post mortem* examinations, and of the results of any such examination.
- D. When carrying out exhumations and when the circumstances permit, consideration should be given to the presence of the families or of family representatives.
- E. After *post mortem* examination, the remains should be released to the family at the earliest time possible.
- F. The processes of identifying human remains for the families' sake and of investigating the cause of death for the purpose of judicial proceedings are both of equal importance, in particular with regard to the exhumation of mass graves. Hence:
  - a. information should be collected for the purpose of identification whenever exhumations are performed;
  - b. the principles governing the protection of personal data and genetic information should be respected.

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- G. Ethical rules of conduct on the use of means of identification, in particular for investigations carried out in an international context, should be promoted and/or adopted by the competent authorities.
- 23.3 All necessary measures must be taken to ensure that members of the armed and security forces / armed groups and peace-keeping or peace-enforcement units:
- A. treat and handle properly identity discs or other means of identification worn by members of the adverse party, whether captured, wounded or dead;
  - B. are trained and given information on means of identification and the treatment of the dead.
- 23.4 Common norms, procedures and standards, including technical and ethical guidance, on exhumations, *post mortem* examinations and other matters relating to the practice of forensic science should be adopted at the international level, through international organizations or other available means.
- 23.5 All effective legislative, administrative, judicial or other measures, including penal sanctions in appropriate cases, should be taken to ensure that the identification of human remains is not intentionally obstructed, interfered with or impeded.
- 23.6 Despoliation and desecration of the dead should constitute crimes under international law when committed in non-international armed conflicts. Intentionally mutilating the dead before their repatriation as part of a widespread and systematic policy should be considered an aggravated form of the crime.
- 24. Identification and the collecting and forwarding of information**
- 24.1 **Identification of members of the armed and security forces**
- A. The compulsory use of means of identification should be extended to all members of the armed and security forces involved in international or non-international armed conflicts, in situations of internal violence, or in peace-keeping or peace-enforcement operations. At a minimum, identity discs should be used.
  - B. Measures for the identification of members of armed groups in non-international armed conflicts, whether optional or compulsory, should be included in any new instruments applicable in non-international armed conflicts.
  - C. International military cooperation agreements or programmes should include technical or financial support, where needed, for the system used to identify members of armed forces, including the availability of identity discs for all members of the armed forces.
  - D. UN regulations and directives applicable during peace-keeping or peace-enforcement operations should provide for the compulsory use of means of identification for members of peace-keeping or peace-enforcement units. At a minimum, identity discs should be used.
- 24.2 **Identification of other persons to prevent them from becoming unaccounted for**
- A. In times of armed conflict or internal violence, a personal identity document or any other means of identification should be available to any person upon request.
  - B. In times of armed conflict or internal violence, all persons at risk, such as unaccompanied children, elderly and disabled persons, displaced persons, refugees, asylum-seekers, etc., should be registered individually, as quickly as possible, in order to make specific arrangements for their protection and assistance. Such registration should be carried out in compliance with the rules governing the protection of personal data.
- 24.3 **Rules of criminal procedure**
- A. The rules of criminal procedure and investigation applicable to international courts and tribunals should provide that:
    - a. all information collected during exhumations that might help identify the victims of armed conflict or internal violence is forwarded to the authorities responsible for identifying the victims;
    - b. all information / evidence gathered on deceased persons during judicial proceedings or investigations is forwarded directly to the family or to the ICRC, the latter acting either as an intermediary or to ensure that the information is properly stored pending transmission to the families.
  - B. Sentencing rules may establish mitigating circumstances for convicted persons who provide relevant information on the fate of missing persons and on the location of human remains.



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### 24.4 Information Bureaux

- A. In armed conflict or internal violence, appropriate mechanisms should be put in place to ensure that all relevant information on persons affected by the armed conflict or internal violence is collected, centralized and, if it is not detrimental to the concerned persons or his / her relatives, transmitted to the families are informed. In particular:
  - a. Information Bureaux should be set up in the context of non-international armed conflicts, whenever appropriate;
  - b. in international and non-international armed conflicts, Information Bureaux should also centralize information on persons belonging to the party responsible for the Information Bureau.

## 25. The legal situation of missing persons and of their relatives

25.1 **With regard to the legal situation of missing persons**, consideration should be given to the principles set forth below.

- A. Missing persons should be declared absent:
  - a. at the request of their relatives or the competent authority under domestic law; if someone other than the relatives requests a declaration of absence, the relatives should be allowed to oppose such declaration;
  - b. after a reasonable period of absence; in times of armed conflict or internal violence, such period should be shorter than the period applicable in time of peace;
  - c. by a competent judicial, administrative or military authority.
- B. Missing persons should be declared dead:
  - a. at the request of any interested person; if someone other than the relatives requests a declaration of death, the relatives should be allowed to oppose such declaration;
  - b. if, in the circumstances, it can be reasonably believed that the missing person is dead, or after a reasonable period of absence; in times of armed conflict or internal violence, such period should be shorter than the period applicable in time of peace;
  - c. by a competent judicial authority.

### 25.2 Consequences of a declaration of absence or a declaration of death

- A. The dissolution of a marriage should be pronounced at the request of the surviving spouse.
- B. With regard to measures concerning the children of missing persons, the interests of the child are paramount.
  - a. Measures must be taken for the provisional custody of the child immediately after the parents have been reported missing.
  - b. Whenever possible, parental custody should be given to the surviving parent or, if both parents are missing, to another family member.
  - c. There should be no adoption against the express wishes of the child or its concerned relatives or legal guardians.
  - d. The rules on adoption must be consistent with the 1989 Convention on the Rights of the Child.

25.3 Measures must be taken for the temporary / permanent management and/or disposal of the property of missing persons.

25.4 The dependents of missing persons should be given assistance enabling them to meet their immediate needs. They should be entitled to social and financial benefits similar to those granted to other victims under domestic law, without adverse discrimination between the dependents of servicepersons and civilians. Such assistance should include:

- A. financial assistance;
- B. specific social services or priority access to existing social services.

25.5 Persons missing as a result of a violation of international law and their relatives have a right to be granted reparation.

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### 26. Protection and management of personal data

26.1 **Minimum standards** on the protection and management of personal data should be based *inter alia* on the following principles.

- A. Lawfulness and fairness
  - a. Personal data should be collected and processed fairly and lawfully.
  - b. Personal data should not be collected, processed or used in a way that could give rise to unlawful or arbitrary discrimination.
  - c. Personal data should be obtained, where appropriate, with the freely given and informed consent of the person to whom the data relate.
  - d. Clarifying the fate of missing persons should be considered a lawful purpose.
- B. Purpose specification
  - a. Any personal data collected should be relevant to the purpose for which they are to be used.
  - b. Personal data may not be used, disclosed or transferred for purposes other than those for which they were collected without the consent of the person, where appropriate.
  - c. The period for which personal data are stored should not exceed that which is necessary for the fulfillment of the specified purpose.
- C. Accuracy and security
  - a. Personal data should be accurate, complete and kept up-to-date as is necessary for their specified purpose.
  - b. Personal data should be protected by adequate security measures from loss or unauthorized access, destruction, use, modification or disclosure.
- D. Interested-person access
  - a. Access to personal data should be granted to the individual to whom the information relates.
  - b. A right to challenge the accuracy and completeness of the data and to have them amended as appropriate should also be provided for.
- E. Accountability and supervision
  - a. The controller of personal data should be held accountable for complying with the above-mentioned principles.
  - b. An authority should be designated or established to monitor observance of the above-mentioned principles, and be empowered to impose adequate penalties in case of violations.
- F. Exceptions
  - a. Exceptions to the above-mentioned principles may be authorized if they are necessary to protect national security, public order, public health or the rights and freedoms of others, provided that the law makes provision for such exceptions.
  - b. Where relevant, exceptions should be provided for when the data are collected and processed to protect the human rights and fundamental freedoms of the individual concerned or in connection with the mandate and activities of the ICRC or an inter-governmental humanitarian organization.
  - c. An exemption clause should be provided for the ICRC and inter-governmental humanitarian organizations when the performance of their mandate requires the collection and processing of personal data.

26.2 **Minimum standards on data protection and management of DNA samples, profiles and analysis** should be based *inter alia* on the following principles.

- A. Application of personal data protection principles
  - a. The collection, use and disclosure of DNA profiles should be subject to the rules relative to the protection of personal data.
- B. Consent
  - a. The taking of DNA samples and their analysis should be subject to the free and informed consent of the individual concerned.
  - b. In certain circumstances, consent may be implied when it cannot be physically or legally obtained.
- C. Purpose specification
  - a. Identification of human remains through DNA typing should only be undertaken when other investigative techniques of identification are not adequate.
  - b. DNA information collected to identify missing persons or human remains may only be used and disclosed for that specific purpose.
  - c. The use of DNA analysis to derive or disclose health information or personal characteristics (except gender) other than those required for the purposes of identification should be prohibited.

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- d. DNA samples and analyses may not be used, disclosed or transferred for purposes other than those for which they were collected without the consent of the person concerned.
  - e. DNA samples and profiles should be destroyed / deleted when the missing persons have been identified, unless they are required for related purposes.
- D. Integrity and security
- a. Forensic procedures should be carried out by an appropriately qualified person.
  - b. DNA samples, profiles and records should be adequately protected from unauthorized access and use, and DNA information separated from other personal data.
  - c. DNA analyses should only be performed by certified or accredited laboratories.
- E. International transfer
- a. In the context of international cooperation, DNA profiles or samples should only be disclosed, transferred or compared for the purposes of identification, and only with the consent of the persons concerned if it can be physically or legally obtained.
  - b. DNA samples should not be transferred except where the analysis is to be performed abroad.
- F. Exceptions
- a. Exceptions to the above-mentioned principles may be authorized if they are necessary to protect national security, public order, public health or the rights and freedoms of others, provided that the law makes provision for such exceptions.

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### V. Recommendations for the development of domestic law

#### 27. Foreword

27.1 **The following recommendations must be read with chapters III and IV.** They include domestic measures that *must* be taken to implement obligations under international law, as they appear in chapter III, and domestic measures that *should* be taken to implement the recommendations with regard to the development of international law, as they appear in chapter IV.

#### 28. Knowing the fate of relatives

- 28.1 All necessary legislative, regulatory and practical measures must be taken to implement obligations arising from international humanitarian law, including obligations relative to the clarification of the fate of missing persons.
- 28.2 In armed conflict and internal violence, domestic law and regulations should recognize the individual right of family members to know the fate of missing relatives, including their whereabouts or, if dead, the circumstances and cause of their deaths. Implementing measures should include, in particular:
- A. the duty of the competent national authorities regularly to inform family members about the process and results of the investigation concerning the whereabouts or fate of a missing relative;
  - B. remedies in case the right of family members to receive regular and adequate information on the whereabouts or fate of missing relatives, or on the process and results of investigation, is violated, said remedies to include the review of decisions denying access to information and the award of adequate compensation;
  - C. penal or administrative sanctions for unlawfully withholding available information or refusing to make reasonable efforts to obtain and provide information on the fact of death and/or on the cause and the reasons / circumstances of death when such information is requested by a relative of a missing person.
- 28.3 Standing operating procedures, directives and instructions should include measures to implement the right of families of members of armed forces or armed groups to know the fate of their relatives.
- 28.4 Domestic law and regulations must ensure that, in international armed conflicts, protected persons are allowed to inform their families of their capture / arrest, address and state of health. Capture / internment cards must be issued by the authorities for that purpose.
- 28.5 In non-international armed conflicts and situations of internal violence, domestic law and regulations should ensure that persons deprived of their liberty for reasons related to the conflict or the situation have the right to inform their families of, at least, their capture / arrest, address and state of health. Adequate means of communication should be provided for that purpose. The right to inform relatives of one's capture / arrest, address and state of health should not be interpreted as restricting the right to correspond with the members of one's family.
- 28.6 Domestic law should recognize that no individual should be punished for maintaining private or personal contact with relatives, or for inquiring about the fate or whereabouts of a relative, whatever the nature of the act, including criminal acts and acts against State security, that relative may have or is suspected of having committed.
- 28.7 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. Penalties should be defined that are appropriate to the gravity of the offence.
- 28.8 The systematic and deliberate denial of the right to inform relatives of one's capture / arrest, address and state of health should be punished as a criminal offence under domestic law. Penalties should be defined that are appropriate to the gravity of the offence.

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### 29. General protection

#### 29.1 The duty to respect and ensure respect for international humanitarian law and to give effect to protected human rights

- A. All necessary legislative, regulatory and practical measures must be taken to implement the obligations arising from international humanitarian law and aimed at preventing persons from becoming unaccounted for and accounting for persons reported missing as a result of an armed conflict.
- B. All legislative or other measures must be taken to give effect to internationally protected human rights, without distinction of any kind, in order to prevent persons from becoming unaccounted for and to account for persons reported missing. Those rights include:
  - a. the right not to be arbitrarily deprived of one's life;
  - b. the right not to be arbitrarily deprived of one's liberty;
  - c. the right to a fair trial affording all judicial guarantees;
  - d. the right to respect for one's family life;
  - e. the prohibition of torture and other cruel, inhuman or degrading treatment;
  - f. the prohibition of enforced disappearances;
  - g. the rights of persons deprived of their liberty.

#### 29.2 The duty to establish a responsible command

- A. Orders and instructions must be given to ensure compliance with international humanitarian law, and their execution supervised. In particular, regulations, orders and instructions must be issued to:
  - a. prevent the killing and ill-treatment of persons not participating or no longer participating in hostilities, including persons *hors de combat*;
  - b. regulate capture / arrest for reasons related to an armed conflict and ensure that those captured / arrested are treated humanely.
- B. It must be ensured that military commanders prevent and where necessary suppress and report to the competent authorities breaches of international humanitarian law committed by members of the armed forces / armed groups under their command and other persons under their control. To that end:
  - a. a strict chain of command must be maintained to ensure that subordinates obey the rules;
  - b. the necessary orders / procedures should be issued;
  - c. effective supervision should be exercised.
- C. In situations of internal violence, the State authorities should ensure that commanders and/or superiors prevent and where necessary suppress and report to the competent authorities breaches of the applicable rules of conduct and engagement committed by arms carriers under their command or authority.

#### 29.3 The duty to suppress violations of international humanitarian law and to establish an internal disciplinary system

- A. Domestic law must provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of international humanitarian law. The relevant authorities must search for such persons and bring them to justice.
- B. Domestic law and regulations must ensure that the armed forces, including the armed members of resistance movements, are organized and subject to an appropriate internal disciplinary system allowing for enforcement of the rules of international humanitarian law and international human rights law.
- C. Domestic law and regulations must include all necessary measures for the suppression of all acts contrary to international humanitarian law, whether committed by members of the armed forces / armed groups, public officials or civilians.
- D. Domestic law and regulations should include all necessary measures for the prevention and punishment of enforced disappearances.
- E. Domestic law should ensure that all persons, whatever their quality or rank, are held accountable for offences that they committed or ordered to be committed.
- F. Domestic law and regulations must recognize that combatants have a duty not to carry out manifestly unlawful orders. They should recognize such a duty for arm carriers in situations of internal violence.

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### 29.4 The duty to spread knowledge of international humanitarian law and international human rights law

- A. Each party to a conflict must ensure that the forces under its command know their obligations under international humanitarian law, in particular that:
  - a. committing or ordering the commission of an act that constitutes a violation of international humanitarian law may entail domestic and international criminal responsibility;
  - b. members of the armed forces have the right and duty not to carry out a manifestly unlawful order;
  - c. orders from a superior officer may not be invoked as a defence.
- B. Domestic law and regulations must ensure that commanders are required to undertake to make their subordinates aware of their obligations under the law.
- C. The civilian population, including civil servants, should receive the necessary education in international humanitarian law.
- D. Members of the armed forces and the civilian population should receive the necessary education in international human rights law.

### 30. Use of force by law enforcement officials

- A. To ensure that law enforcement officials play their role properly, domestic law and regulations should uphold the following principles:
  - a. law enforcement officials, including military or State security officers exercising police powers, should use force only when strictly necessary and to the extent required for the performance of their duty;
  - b. intentional lethal use of firearms may only be made when strictly unavoidable in order to protect human life;
  - c. whenever the lawful use of force and firearms is unavoidable:
    - I. assistance and medical aid should be rendered to any injured or affected persons at the earliest possible moment;
    - II. relatives of or other persons having close relationships with the injured or affected person should be notified at the earliest possible moment.
- B. The rules and regulations on the use of firearms by law enforcement officials should include guidelines:
  - a. ensuring that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
  - b. regulating the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
  - c. providing for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

### 31. Protection of persons deprived of their liberty

- 31.1 Arrest, detention or imprisonment must be carried out only in strict accordance with the provisions of the law and by competent officials or persons authorized for that purpose; those persons should be identifiable and, wherever possible, should identify themselves. To that end, regulations, orders and instructions should be issued to govern arrest and detention procedures.
  - A. Domestic law and regulations must ensure that, in international armed conflicts, protected persons deprived of their liberty are allowed to inform their families of their capture / arrest, address and state of health.
  - B. Domestic law and regulations should ensure that persons deprived of their liberty for reasons related to non-international armed conflict or internal violence have the right to inform their families - or any other person of their choice - of, as a minimum, their capture / arrest, address and state of health. In addition:
    - a. accurate information about the arrest and the place of detention or internment, including any transfers and release, should be made available without delay to relatives and defence counsels;
    - b. the death or serious illness of persons deprived of their liberty, whether interned or detained, should be notified without delay to the spouse, a near relative or any other person previously designated by the person interned or detained.
  - C. Domestic law and regulations, including orders and instructions, must ensure that any persons deprived of their liberty for reasons related to non-international armed conflict or internal violence are informed promptly of the reasons why. In addition, they should ensure the effective protection, *inter alia*, of the right:
    - a. to the assistance of a defence counsel of their choice;
    - b. to request and receive a medical examination and health care.

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- D. Domestic law and regulations should ensure that:
- a. persons deprived of their liberty, whether interned or detained, are held in officially recognized places of internment or detention;
  - b. persons deprived of their liberty, whether interned or detained, are not kept in secret locations, or prevented from informing their relatives or other close relations of their arrest and place of detention or internment;
  - c. official registers of all persons, whether interned or detained, are maintained and kept up-to-date in every place of internment or detention (including police stations and military bases) and made available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities;
  - d. in case of arrest, detention or internment, the information to be registered includes:
    - I. the name and identity of each person interned or detained, and the reasons for the arrest, detention or internment;
    - II. the name and identity of the officials who made the arrest;
    - III. the date and time the person was arrested and taken to a place of internment or detention;
    - IV. the date and time of the person's appearance before a judicial authority;
    - V. the date, time and circumstances of the person's release or transfer to another place of internment or detention;
  - e. the transfer or release of persons deprived of their liberty is notified to the spouse, a close relative or any other person designated by them.
- E. Domestic law and regulations must ensure that persons deprived of their liberty for reasons related to armed conflict or internal violence are treated in conformity with applicable international standards. In particular:
- a. with regard to children, women and members of the same family:
    - I. in international armed conflicts, interned members of the same family must be lodged together in the same place of internment;
    - II. in international and non-international armed conflicts, women deprived of their liberty must be separated from interned or detained men, unless they are members of the same family; the same treatment should be applied in situations of internal violence;
    - III. in all circumstances, children deprived of their liberty must be separated from interned or detained adults, unless they are members of the same family;
  - b. with regard to visits and correspondence:
    - I. the right of persons deprived of their liberty to correspond with family members must be respected;
    - II. persons deprived of their liberty must be allowed to receive visitors; in particular, relatives, lawyers and doctors should have regular access to them;
  - c. with regard to visits of inspection:
    - I. in international armed conflicts, access to all protected persons deprived of their liberty for reasons related to the conflict must be granted to the ICRC immediately after their capture or arrest;
    - II. in all circumstances, regular, independent, unannounced and unrestricted visits of inspection by the ICRC, or another independent national or international organization, should be allowed.
- F. In non-international armed conflicts and situations of internal violence, domestic law must ensure that any form of detention is subject to the effective control, including in respect of its lawfulness, of a judicial authority whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.
- G. Domestic law and regulations must ensure that persons deprived of their liberty for reasons related to armed conflict or internal violence and subject to judicial / criminal proceedings are afforded the rights of a fair and regular trial and that fundamental judicial guarantees are observed.

### 31.2 Release of persons deprived of their liberty

- A. The necessary measures, including orders and instructions, should be adopted to ensure that persons deprived of their liberty are released in a manner allowing for reliable verification of their release and guaranteeing their security.
- B. The release of persons deprived of their liberty should be notified by the relevant authorities to the spouse, a close relative or any other person designated by them.
- C. The adequate measures, including orders and instructions, should be adopted to ensure that, on their release, prisoners of war are not repatriated against their will.

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### 31.3 Amnesty

- A. In non-international armed conflicts, at the end of the hostilities the authorities in power are encouraged to grant an amnesty to persons who participated in the conflict for acts of hostility that are lawful under international humanitarian law. The amnesty should be granted by a legislative act.
- B. Such amnesty must not cover persons who committed crimes under international law, including war crimes, genocide and crimes against humanity.
- C. The granting of an amnesty should not preclude the initiation of civil proceedings or have a legal effect on the victims' right to reparations.
- D. An amnesty for acts other than crimes under international law or acts of hostility that are lawful under international humanitarian law should be granted only to individuals and under certain conditions; for example, it should be made conditional on a special hearing, on full disclosure of wrongdoing, or on the provision of information on missing persons.
- E. Amnesty procedures must involve all guarantees of due process.
- F. Amnesty procedures should provide an opportunity for identifiable victims to question and challenge the decision.

## 32. Communication between family members

### 32.1 The right to exchange news

- A. Persons affected by armed conflict or internal violence (other than persons deprived of their liberty for reasons related to armed conflict or internal violence)
  - a. Domestic law and regulations must ensure that persons affected by armed conflict or internal violence, including displaced persons and persons living in occupied / controlled territory, have the right to correspond with their families wherever the families may be.
  - b. The right to correspond with family members should be extended to other persons with whom there is a close relationship.
  - c. The right to correspond should be extended to any means of communication available.
- B. Persons deprived of their liberty
  - a. Domestic law and regulations must ensure that:
    - I. in international and non-international armed conflicts, persons deprived of their liberty for reasons related to the conflict have the right to send and receive letters and cards;
    - II. in situations of internal violence, persons deprived of their liberty for reasons related to the situation have the right not to be subjected to arbitrary or unlawful interference with their correspondence.
  - b. The right to receive letters and cards should be extended to any other means of communication available.
  - c. Censorship of correspondence, if permitted, must be done as quickly as possible.
- C. Penal sanctions
  - a. The systematic and deliberate denial of the right to exchange news with relatives or other persons with whom there is a close relationship should be punished as a criminal offence under domestic law.
  - b. Penalties should be defined that are appropriate to the gravity of the offence.

### 32.2 Exemptions from communication charges

- A. Exemption from charges for communications intended for or dispatched to persons deprived of their liberty
  - a. Domestic law and regulations must provide that correspondence intended for prisoners of war or civilian internees or dispatched by them is exempt from all postal charges.
  - b. The exemption should be extended to any other means of communication available.
  - c. In non-international armed conflicts and situations of internal violence, communications should be exempt from all charges, or at least charged at a preferential rate.
- B. Exemption from charges for the ICRC
  - a. Domestic law and regulations must provide that correspondence concerning prisoners of war and civilian internees, dispatched or received by them via the ICRC or an Information Bureau, is exempt from all postal charges.
  - b. The exemption should be extended to any other means of communication available.
  - c. In non-international armed conflicts and situations of internal violence, communications sent via the ICRC should be exempt from all charges, or at least charged at a preferential rate.



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### 32.3 **Contacts between members of armed or security forces and their relatives**

- A. Domestic military law or regulations should provide for the possibility of armed or security forces to maintain contact with their relatives.
- B. Standing operating procedures should be issued on the system used to exchange news between members of armed forces and their relatives to ensure that:
  - a. contact between members of the armed or security forces and their relatives are allowed and made possible at least once a month under any circumstances;
  - b. the communications are free of charge, or at least no more costly than internal communications.

## 33. **Treatment of the dead and graves and identification of human remains**

### 33.1 **Treatment of the dead**

- A. The remains of those who have been killed in action and of other dead persons must be disposed of in compliance with the rules of international law applicable in armed conflict or internal violence.
- B. The competent authorities must take all necessary measures of a legislative, regulatory or practical nature to implement their obligations under international law, in particular with regard to the search, collection, identification, transportation, disposal or burial, and repatriation of the persons deceased in relation to armed conflict or internal violence.
- C. For the benefit of members of the armed forces, including those involved in peace-keeping or peace-enforcement operations, of armed groups, and of civilian auxiliary services or other organisms involved in the collection and management of the dead, Standing operating procedures, directives or instructions should be issued on:
  - a. the search, collection, and identification of the dead without distinction;
  - b. the exhumation, collection, transportation, temporary storage or burial, and repatriation of human remains and corpses;
  - c. training and information on means of identification and the treatment of the dead.
- D. In all circumstances, applicable procedures, directives and instructions should respect *inter alia* the following principles:
  - a. the dead must be treated with respect and dignity;
  - b. the dead must be identified, whenever possible, before their remains are disposed of.
- E. With regard to the burial of the dead, in international and non-international armed conflicts, procedures, directives and instructions must provide *inter alia* that:
  - a. burial should be in individual graves, unless unavoidable circumstances require the use of collective graves;
  - b. all graves must be marked.
- F. In times of armed conflict or internal violence, provision should be made for the return of remains and personal effects to the other party or to the families on request.

### 33.2 **Identification of human remains and investigation into the cause of death**

- A. Domestic law and regulations should ensure that the identity of human remains and the cause of death are established with due diligence by a competent official. In particular they should designate the public official or person competent:
  - a. to perform *post mortem* examinations;
  - b. to make the final determination as to identity and cause of death.
- B. The authority, or authorities, competent to issue and deliver death certificates must be designated. In addition, provision should be made:
  - a. for circumstances where a medical practitioner or other person competent to issue a death certificate is not readily available within a reasonable time;
  - b. for the delivery and issuing of death certificates on the basis of information obtained from official sources or reliable witness accounts provided by the ICRC (attestation of knowledge of death).
- C. In situations of internal violence, domestic law and regulations must provide for an effective official investigation into the circumstances of death when any person is killed or appear to have been killed as a result of the use of force by agents of the State.

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### 33.3 Exhumations and *post mortem* examinations

- A. Domestic law should ensure that exhumations are performed only with the proper authorizations, and according to the conditions specified in law. Regulations on health and environmental standards should be issued.
- B. The procedures of exhumation and *post mortem* examination 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 the decisions in relation to exhumations and *post mortem* examinations, and of the results of any such examination.
  - d. When carrying out exhumations and when the circumstances permit, consideration should be given to the presence of the families or of family representatives.
  - e. After *post mortem* examination, the remains should be released to the family at the earliest time possible.
- C. Domestic law and regulations should ensure that the processes of identifying human remains for the families' sake and of investigating the cause of death for the purpose of judicial proceedings are of equal importance, in particular with regard to the exhumation of mass graves. Hence:
  - a. information should be collected for the purpose of identification whenever exhumations are performed;
  - b. regulations and procedures should be in conformity with the principles governing the protection of personal data and genetic information.
- D. Ethical rules of conduct on the use of means of identification, in particular for investigations carried out in an international context, should be promoted and/or adopted by the competent authorities.

### 33.4 Information to facilitate the identification of human remains

- A. In international and non-international armed conflicts, the competent authorities must adopt adequate procedures for providing information on identity, location and cause of death to the appropriate authorities or to the families. The procedures should provide for:
  - a. the centralization of information on deceased persons, in particular when the corpses or human remains cannot be returned to the families immediately;
  - b. the establishment of the following lists, to be transmitted to the other party to the conflict through its Information Bureau, the ICRC or otherwise, whenever necessary:
    - I. persons deceased under their authority or control, whether identified or not;
    - II. the location of human remains and graves;
    - III. death certificates issued;
  - c. the official confirmation of deaths known from other reliable sources, in particular information provided by the ICRC.
- B. Individual notifications should be made to the other party to the conflict, to the families or to the ICRC, when appropriate.
- C. In situations of internal violence, the necessary measures should be taken so that appropriate mechanisms are put in place to ensure that all relevant information on persons affected by the situation of internal violence is collected and centralized, and the families are informed.
- D. In international armed conflicts, the authorities must provide for the establishment and operation of an official Grave Registration Service to see to the dead, including burials, and to record the particulars of graves and those there interred. A similar procedure should be established in non-international armed conflicts.

### 33.5 Penal sanctions

- A. The crimes under international law of despoliation and desecration of the dead should be punished as a criminal offence under domestic law. Intentionally mutilating the dead before their repatriation as part of a widespread and systematic policy should be considered an aggravated form of the crime.
- B. Intentionally obstructing, interfering with, or impeding the process of identification of human remains for the purpose of preventing said identification should be punished as a criminal offence under domestic law.

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### 34. Identification and the collecting and forwarding of information

#### 34.1 Identification of members of the armed and security forces

- A. Domestic military law or regulations must ensure that members of the armed forces liable to become prisoners of war are provided with an identity card.
- B. The compulsory use of means of identification should be extended to all members of the armed and security forces involved in international or non-international armed conflicts, in situations of internal violence, or in peace-keeping or peace-enforcement operations. At a minimum, identity discs should be used.
- C. Standing operating procedures should be issued on:
  - a. the identification system for members of armed forces;
  - b. the proper use of identity discs.

#### 34.2 Identification of other persons to prevent them from becoming unaccounted for

- A. All necessary legislative and regulatory measures should be taken to ensure that births and deaths are duly registered.
- B. In times of armed conflict and internal violence, all necessary legislative and regulatory measures should be taken to ensure that a personal identity document or any other means of identification is available to any person on request. Children should have either their own personal ID or be registered on their parents' ID. The issuing and use of the ID, or the information appearing on it, should not be likely to give rise to arbitrary or unlawful discrimination.
- C. In times of armed conflict and internal violence, all necessary measures should be taken to ensure that all persons at risk, such as unaccompanied children, elderly and disabled persons, displaced persons, refugees, asylum-seekers, etc., are registered individually, as quickly as possible, in order to make specific arrangements for their protection and assistance. Such registration should be carried out in compliance with the rules governing the protection of personal data.

#### 34.3 Rules of criminal procedure

- A. The rules of criminal procedure and investigation should provide that:
  - a. all information collected during exhumations that might help identify the victims of armed conflict or internal violence is forwarded to the authorities responsible for identifying the victims;
  - b. all information / evidence gathered on deceased persons during judicial proceedings or investigations is forwarded directly to the family or to the ICRC, the latter acting either as an intermediary or to ensure that the information is properly stored pending transmission to the families.
- B. Sentencing rules may establish mitigating circumstances for convicted persons who provide relevant information on the fate of missing persons and on the location of human remains.

#### 34.4 Information Bureaux

- A. Every State must take all the measures required to establish an Information Bureau when a conflict breaks out and in all cases of occupation:
  - a. to centralize, without adverse distinction, all information on the wounded, sick, shipwrecked, dead, protected persons deprived of their liberty, children whose identity is in doubt and persons who have been reported missing and to provide this information to the appropriate authorities, through the intermediary of the Protecting Powers and of the ICRC Central Tracing Agency;
  - b. to be responsible for replying to all enquiries concerning protected persons and for making any enquiries needed to obtain any information requested that is not in its possession;
  - c. to act as an intermediary for the free transport of matter, including correspondence, sent to and by protected persons.
- B. An Information Bureau with analogous responsibilities should be set up in a non-international armed conflict whenever appropriate. Its mandate could include:
  - a. informing family members of the whereabouts or fate of their relatives;
  - b. taking all necessary measures to enquire about the whereabouts or fate of a missing person when requested, in the event it is not in possession of the relevant information, and searching for additional information.
- C. In international and non-international armed conflicts, Information Bureaux should also centralize information on persons belonging to the party responsible for the Information Bureau.
- D. The structure and the working procedures of the Information Bureau to be set up, the role to be played by the National Red Cross / Red Crescent Society, and the coordination mechanisms for the collection and transmission of information should be defined in peacetime.

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- E. Procedures, directives or instructions must be issued to ensure that, in international armed conflicts, all persons belonging to the adverse party who are detained or interned and all known deaths resulting from the hostilities are registered, and that the information is transmitted to the appropriate authorities. These procedures, directives or instructions must provide that:
  - a. the information recorded be of a nature to make it possible to identify the persons exactly and to advise the next-of-kin quickly;
  - b. information the transmission of which might be detrimental to the person concerned or to his or her relatives is forwarded to the ICRC Central Tracing Agency only.
- F. Similar procedures, directives or instructions should be issued to ensure that, in non-international armed conflicts, all persons belonging to the adverse party who are detained or interned and all known deaths resulting from the hostilities are registered, and that the information not detrimental to the concerned persons or to his / her relatives is transmitted to the families or to the appropriate authorities.
- G. Domestic law and regulations must provide that the Information Bureaux and the ICRC Central Tracing Agency enjoy free postage for all mail. The exemption from charges should be extended to any other means of communication available, or at least the charges greatly reduced.

### 35. The legal situation of missing persons and of their relatives

#### 35.1 The legal situation of persons reported missing as a result of armed conflict or internal violence

- A. Persons presumed to be alive
  - a. Missing persons should be presumed to be alive until their fate has been ascertained or their death legally declared.
  - b. A person should not be declared dead before sufficient evidence has been gathered.
  - c. It might be desirable to provide for an interim period of absence before a death certificate is issued.
  - d. Provision must be made for the consequences of the return of missing persons who have been legally declared dead.
- B. Persons declared absent
  - a. A declaration of absence should be issued if it has been established that a person has been missing for a determined period of time. The minimum period of absence before a declaration of absence is issued should not be less than one year, but provision may be made for a shorter period with regard to particular events or circumstances.
  - b. A declaration of absence should be issued at the request of relatives or the competent authority. If someone other than the relatives requests a declaration of absence, the relatives should be allowed to oppose such declaration.
  - c. A declaration of absence should be issued by a competent judicial, administrative or military authority.
  - d. Account must be taken of the particular difficulty of gathering and furnishing the necessary evidence / documentation in times of armed conflict or internal violence, and in post-conflict situations. Provision should be made for the presentation of substitute or alternate evidence / documentation. It may be appropriate for attestations of absence established by military units, reliable local institutions or the ICRC to be given probative value (e.g. ICRC attestations based on tracing requests).
- C. Persons declared dead
  - a. A declaration of death should be issued at the request of any interested person or the competent authority. If someone other than the relatives requests a declaration of death, the relatives should be allowed to oppose such declaration.
  - b. A declaration of death should not be issued before all available measures or actions to ascertain the fate of the missing person have been taken, including public notifications that a declaration of death is to be issued.
  - c. A declaration of death should be issued after a reasonable period of absence has elapsed, said period to be shorter than the period generally applicable in time of peace and not more than 2 years, or if, in the circumstances, it can be reasonably believed that the missing person has died.
  - d. A declaration of death should be issued by a judicial authority.
  - e. As in point B.d above, in certain circumstances, the presentation of substitute or alternate evidence / documentation should be allowed.
  - f. The courts in the missing person's place of residence or the courts in the family's current place of residence should be competent to hear a request for a declaration of death.

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### 35.2 Consequences of a declaration of absence or a declaration of death

#### A. Civil status of the spouse and children

- a. The civil status of the spouse and children should not be modified before the death of the missing person has been legally recognized.
- b. The dissolution of the marriage should be pronounced at the request of the surviving spouse. Cultural and religious traditions should be taken into account with regard to matrimonial matters.
- c. The interests of the child should be paramount. It is recommended that:
  - I. measures be taken for the provisional custody of the child immediately after the parents have been reported missing;
  - II. whenever possible, the surviving parent should have custody of the child after the other parent has been declared absent or dead; if both parents are reported missing, the child should be placed in the custody of another family member;
  - III. there should be no adoption against the express wishes of the child or its concerned relatives or legal guardians;
  - IV. the rules governing adoption must be consistent with the 1989 Convention on the Rights of the Child.

#### B. Property

- a. The rights and interests of missing persons must be protected at all times until their fate has been ascertained or their death recognized.
- b. In order to protect the interests of missing persons and meet the material needs of their dependents:
  - I. in the period immediately following a disappearance, the dependents should be entitled to request that an allowance be drawn from the assets of the missing person in order to meet their immediate needs, especially when there is no public assistance available; a representative, preferably a member of the family, should be appointed to see to the immediate interests of the missing person;
  - II. a declaration of absence should enable the heirs to take provisional possession of the missing person's estate; in the absence of a designated representative, one should be appointed (preferably a family member) to manage the property and exercise the missing person's rights until his/her fate has been determined; the representative should act under the control of a judicial or other competent public authority, and judicial authorization should be required for important decisions affecting the missing person's property;
  - III. a judicial declaration of death should have the same civil effects as a death certificate. However, provision should be made in the event a missing person's return with regard to compensation / reparation, restitution, assistance and social care.

### 35.3 Public assistance and reparation

#### A. Entitlements as victims

- a. The dependents of missing persons who have been declared absent in relation to armed conflict or internal violence should be entitled to the same social or financial benefits provided for other victims. A declaration of absence, as described above, or an attestation issued by a public authority or by the ICRC, should be sufficient for such entitlement.
- b. There should be no adverse discrimination between the dependents of servicepersons and civilians.

#### B. Financial assistance

- a. If needed, financial assistance should be provided to all dependents.
- b. If needed, financial assistance should also be provided to persons returning after a prolonged period of absence.

#### C. Social benefits

- a. Basic social services should be offered to the dependents of missing persons. They may include:
  - I. an allowance for basic material needs;
  - II. housing benefits and employment opportunities;
  - III. health care;
  - IV. an education allowance for the children;
  - V. legal assistance.
- b. If needed, assistance should also be provided for the rehabilitation or reintegration into society of persons returning after a prolonged period of absence.

#### D. Reparations

- a. Persons missing as a result of a violation of international law and their relatives have a right to be granted reparation.

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### 36. Protection and management of personal data

36.1 **Protection of personal data:** the principles described below should be incorporated into domestic law.

- A. Personal data should be collected and processed fairly and lawfully.
  - a. The method of collection should not be deceptive, fraudulent or contrary to the law. This implies that consent with respect to the collection of the data should not be obtained through deception.
  - b. This principle should not prevent the collection from a third party of data that may have been gathered improperly or unlawfully, when the purpose of the data collection is considered to be overriding.
  - c. It may be appropriate to make it mandatory to register certain databases containing personal data with a public authority.
- B. The collection and use of personal data should be subject to the consent of the individual to whom the data relate.
  - a. Consent should be freely given and informed. In particular, the purpose of the collection and the destination of the data, including their transfer to a third party, should be disclosed.
  - b. In certain circumstances, the consent of the individual may be presumed or implied, in particular when the individual to whom the data relate cannot be reached and the collection of data is considered to be clearly in his/her best interest in the circumstances.
  - c. The data may not be used, disclosed or transferred for purposes other than those for which they were collected without the consent of the person concerned, except if required by a substantial public interest or for the protection of the vital interests of the person concerned or of others.
- C. The collection and processing of personal data should be limited to that which is necessary for the purpose identified at the time of collection, or beforehand.
- D. Personal data should be collected, processed and stored with appropriate safeguards.
  - a. Sensitive data should only be collected and processed with safeguards commensurate with their sensitivity.
  - b. Personal data should be protected by physical and technical security measures to prevent loss and unauthorized access or disclosure.
  - c. The data controller should be accountable for compliance with the rules governing the protection of personal data.
  - d. A supervising authority should be established to monitor respect for data protection rules and to prescribe appropriate remedies in the event of a breach.
- E. The personal data collected should be accurate, complete and updated as is necessary for the purpose for which they were used.
- F. Personal data may not be used, disclosed or transferred for purposes other than those for which they were collected without the consent of the person concerned, except if required by a substantial public interest or for the protection of the vital interests of the person concerned or of others.
  - a. When the consent of the person cannot be practically or legally obtained, personal data may be transferred or disclosed without explicit consent where:
    - I. disclosure would serve a substantial and overriding public interest;
    - II. disclosure is required to prevent or lessen a serious or immediate threat to the health or safety of the individual concerned, or of other persons;
    - III. disclosure would clearly benefit the individual concerned.
  - b. When the consent of the person cannot be practically or legally obtained, public disclosure of personal data should be considered only if it manifestly serves to protect or to ensure the vital interests of the person concerned or of another person.
  - c. Personal data may only be transferred to third parties that respect the international standards applicable to the protection of personal data.
- G. Personal data should be destroyed as soon as the purpose of their collection has been fulfilled, or when they are no longer needed. They may, however, be retained for a given period (to be defined) if required for the benefit of the individual to whom they relate or if they are essential for the performance of the humanitarian tasks of the organization that collected the data.

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- H. Access to personal data should be granted to the individual to whom the information relates. A right to challenge the accuracy and completeness of the data and to have them amended as appropriate should also be provided for.
  - a. The following general principles should govern access to personal data by the individual concerned:
    - I. all persons have to be informed of the existence, use and disclosure of personal information relating to them;
    - II. on request, a person has a right of access to that information and the right to obtain a copy;
    - III. all persons have the right to challenge the accuracy and completeness of the personal information relating to them and to have it amended as appropriate, or at least to have a notation placed on their file indicating their desire to have the information corrected;
    - IV. remedies should be provided for in case those rights are denied.
  - b. The controller of the files should be allowed to deny access, in part or totally, where the information sought:
    - I. contains references to other individuals or sources of information received in confidence, including information protected by confidentiality agreements concluded for a humanitarian purpose;
    - II. could be expected to seriously threaten an important public interest (national security, public order, etc.);
    - III. could be expected to be seriously detrimental to the interests of other persons;
    - IV. could impede or jeopardize the purpose for which the information was collected, including humanitarian purposes.
- I. Where relevant, exceptions to the above-mentioned principles should be provided for when the purpose of the data collection and processing is the protection of the human rights and fundamental freedoms of the individual concerned or is connected to the mandate and activities of the ICRC or an inter-governmental humanitarian organization.
- J. In the context of the clarification of the fate of missing persons:
  - a. the collection and processing of personal data should be considered a lawful purpose;
  - b. the primary objectives of collecting data are:
    - I. to establish the identity, location, conditions and fate of:
      - i. living persons who are unaccounted for;
      - ii. deceased persons who are unaccounted for;
    - II. to give information to the families on the whereabouts, condition and fate of their lost relatives;
  - c. the personal data collected (for instance, *ante mortem* and *post mortem* data) on:
    - I. living persons who are unaccounted for might include:
      - i. administrative data (name, place of residence, etc.);
      - ii. qualitative data (professional details, activities, known whereabouts, etc.);
      - iii. physical and biological data (sex, age, description, etc.);
    - II. deceased persons who are unaccounted for (human remains) might include:
      - i. administrative data (name, place of residence, etc.);
      - ii. qualitative data (professional details, activities, known whereabouts, etc.);
      - iii. physical and biological data (sex, age, description, etc.), including DNA information;
    - III. families and relatives might include:
      - i. administrative data (name, place of residence, etc.);
      - ii. DNA information collected and used in conformity with applicable principles;
  - d. data collected for purposes other than to clarify the fate of missing persons may be disclosed or used only if:
    - I. their disclosure and use are not incompatible with the purpose for which the data were collected or obtained; or
    - II. the data were derived from publicly accessible sources (such as public registers, professional registers or published directories); or
    - III. their disclosure and use are in the vital interest of the individual to whom the data relate or of a close relative, and the individual is physically or legally incapable of consenting to the disclosure;

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- e. once the data have been collected, their processing may include:
  - I. matching of information from different sources;
  - II. public disclosure of collected information, subject to the applicable rules;
  - III. *ante* and *post mortem* data analysis and matching;
  - IV. DNA analysis and matching;
  - V. providing information on the results of the process, subject to the applicable rules, possibly to:
    - i. living persons who are unaccounted for (when found);
    - ii. families and relatives;
    - iii. the public authorities;
    - iv. private organizations.

36.2 **Protection of genetic information:** the following principles should be incorporated into domestic law.

- A. The collection, use and disclosure of DNA profiles should be subject to the rules relative to the protection of personal data, in particular the management, use, storage and transfer of DNA samples and profiles.
- B. Identification of human remains through DNA typing should only be undertaken when other investigative techniques of identification are not adequate. The application of this principle does not preclude the taking of samples in order to perform DNA analysis at a later stage, in the event that other investigative techniques prove fruitless.
- C. DNA information collected to identify missing persons or human remains may only be used or disclosed for that specific purpose. In particular, the use of DNA analyses to derive or disclose health information or personal characteristics (except gender) other than those required for the purposes of identification should be prohibited.
- D. DNA samples may only be collected and analysed with the informed consent of the individual, except where an overriding public interest dictates otherwise.
  - a. Consent should be freely given and informed.
  - b. Consent may be implied when it cannot be physically or legally obtained, in particular in circumstances where human remains are unidentified.
  - c. DNA samples and analyses may not be used, disclosed or transferred for purposes other than those for which they were collected without the consent of the person concerned, except if required by a substantial public interest or for the protection of the vital interests of the person concerned or of others.
- E. DNA samples and profiles should be destroyed / deleted when the missing persons have been identified, unless they are required for related purposes.
- F. Forensic procedures should be carried out by an appropriately qualified person. Domestic law and regulations should determine the categories of persons authorized to carry out forensic procedures.
- G. DNA samples, profiles and records should be adequately protected from unauthorized access and use.
  - a. Protection should include both physical and technical / electronic security measures.
  - b. The processing of DNA samples and profiles should be independent of the processing of *ante* and *post mortem* data.
  - c. A unique anonymous reference should be the only link between DNA samples and profiles, on the one hand, and *ante* or *post mortem* data on the other. The link should only be accessible to the controllers of *ante* and *post mortem* data.
- H. DNA analyses should only be performed by certified or accredited laboratories. A procedure for the regular supervision of accredited laboratories should be established. Certified laboratories should meet the following criteria:
  - a. high level of professional knowledge and skill, scientific integrity, and appropriate quality control procedures;
  - b. adequate security of the installations and of the substances under investigation;
  - c. adequate safeguards to ensure absolute confidentiality in respect of the identity of the person to whom the DNA analysis relates.
- I. DNA profiles or samples should only be disclosed, transferred or compared in the context of international cooperation for the purpose of identification, and only with the consent of the persons concerned.
  - a. The authorities who transfer data should specify the permissible uses and disclosures by the recipient and receive valid assurances from the recipient that the information will be used and disclosed accordingly, and that applicable standards on the protection of personal data will be respected.
  - b. DNA samples should not be transferred abroad except where the analysis is to be performed abroad.



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### VI. Operational best practices: general

#### 37. Respect for and implementation of international law are the first priorities

- 37.1 Governments and international and local governmental and non-governmental humanitarian and human rights organizations must promote and ensure the ratification of or adherence to international humanitarian law and human rights treaties, including the 1998 Rome Statute of the International Criminal Court.
- 37.2 It is essential to incorporate existing rules of international humanitarian and human rights law into domestic law to prevent people from becoming unaccounted for. In addition, governments must train all State agents and provide information to the population on its rights and obligations, and that includes teaching those rights in schools and universities.
- 37.3 Where appropriate, the incorporation of existing rules of international humanitarian law into domestic law should extend all relevant rules applicable in international armed conflicts to non-international armed conflicts.
- 37.4 Crimes under international law, including war crimes, genocide, crimes against humanity such as enforced disappearances, and torture, must be systematically prosecuted by national or international courts.

#### 38. General best practices for preventing people from becoming unaccounted for and for ascertaining the fate of missing persons

- 38.1 All action and activities must take into account the sensitivities of and be adapted to the cultural and social environment.
- 38.2 All those active in the field during armed conflict or internal violence (national, regional, international, governmental, non-governmental, public or private organizations or institutions, etc.) may encounter situations where people are at risk of disappearing and become unaccounted for. They include in particular:
- A. State authorities (such as national, regional / provincial and local authorities, the Ministries of Justice, the Interior, Defence, Security and Health and Social Affairs, the Attorney General's Office, the Inspector General of Police, the competent judicial authorities and national human rights institutions);
  - B. armed groups and their leaders;
  - C. national players (for example, the National Red Cross / Red Crescent Society, non-governmental humanitarian and human rights organizations, other members of civil society, including traditional authorities, family and women's associations, religious institutions, trade unions, groups representing a diaspora and the press / media);
  - D. international players (such as foreign governments, the ICRC, the UN and its agencies, the International Organization for Migration, regional organizations, human rights organizations such as Amnesty International and Human Rights Watch, humanitarian organizations such as *Médecins du Monde* and the Save the Children Fund, international financial, professional, trade union or religious organizations and corporations, and multinational corporations).
- 38.3 The families of missing persons must be recognized as victims. Their right to information, accountability and acknowledgment must be upheld. Their most fundamental need is nevertheless for information on the fate of their relatives.
- 38.4 All family members have the right to know the fate of relatives missing because of armed conflict or internal violence, including their whereabouts or, if dead, the circumstances and cause of their deaths (see 18 and 28).
- 38.5 The State authorities and armed groups always bear primary responsibility for preventing people from becoming unaccounted for and for ascertaining the fate of those who do. The community of States, international, regional and local governmental and non-governmental organizations and the ICRC provide support and act as facilitators.
- 38.6 The issue of missing persons, including the specific needs of their families, must be deliberated at donor meetings.

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- 38.7 The strategy of any humanitarian or human rights organization in a given situation will depend on the degree of willingness and on the capacity of the State authorities and armed groups to implement measures to prevent people from becoming unaccounted for and to ascertain the fate of missing persons.
- A. When the State authorities and armed groups are willing to take action, the main functions of humanitarian and human rights organizations are to counsel and monitor, and, in cases where resources are in short supply, to act as substitutes for the State authorities or armed groups while providing capacity-building, training, etc.
  - B. When the State authorities and armed groups are unwilling to act, humanitarian and human rights organizations play an important role of advocacy, persuasion and negotiation, prompting the community of States to act and mobilizing international pressure.
- 38.8 A number of dimensions have to be considered simultaneously: responding to urgent needs, working for a safer environment and promoting reparations.
- 38.9 The implementing strategies of humanitarian and human rights organizations will differ depending on their respective mandates, objectives and working methods. They may use different modes of action, ranging from public denunciations to persuasion and including confidential dialogue with the State authorities and armed groups. These modes may be perceived as being both complementary and contradictory: coordination and dialogue are necessary to ensure that one player does not undermine another.
- 38.10 In all cases, those involved are accountable to the victims, namely the missing persons and their families. This implies that they must behave ethically, which means in particular that:
- A. no activity or action may be launched in a given context without preliminary coordination with any local, national, regional or international players already engaged;
  - B. information must be shared for impartial humanitarian purposes;
  - C. those in possession of information on individuals or events having led or possibly leading to persons becoming unaccounted for have a duty to act on that information or, if unable to do so, to forward the information to those who are.

### 39. Information management

- 39.1 All those active in the field during armed conflict or internal violence (national, regional, international, governmental, non-governmental, public or private organizations or institutions, etc.) may encounter situations where people are at risk of disappearing or are missing (see also 38.10).
- A. In some cases, they may be the only ones present in a given place / area at a given time, and thus the only ones able to collect information to prevent people from becoming unaccounted for or to ascertain the fate of missing persons.
  - B. They all receive and collect information in order to be able to perform their tasks.
  - C. They all work according to their respective mandates, principles, modes of action, constraints and methods of work, and use information accordingly. At least some information should be shared, however, for the common objective of preventing the disappearance of persons / groups of population, or of ascertaining the fate of missing persons.
- 39.2 **Coordination and sharing of information** is necessary in order to:
- A. obtain a global understanding of the situation and problems;
  - B. know the ways in which those involved can respond and refer persons in need to the appropriate place for help;
  - C. heighten the effectiveness of the action taken to prevent people from becoming unaccounted for and to ascertain the fate of missing persons.
- 39.3 **Centralization of personal data:**
- A. Centralization of personal data is essential:
    - a. to increase the possibility of finding a match between tracing requests on the one hand, and available / known information (on displaced persons, refugees, persons deprived of their liberty, dead persons, etc.) on the other;
    - b. to make sure all necessary representations can be made to the State authorities and armed groups;
    - c. to keep track of the data in the long term and to be accountable to the victims and to their relatives, a need that may arise years or even decades after the field work, the armed conflict or the situation of internal violence has ended.

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- B. The aim over time must therefore be to centralize personal data.
  - C. An Information Bureau must be set up and operational at the latest when an armed conflict breaks out (see 10.55, 24.4, 34.4 and 82).
  - D. Among humanitarian and human rights organizations, the ICRC, when present, is recognized to be the organization best able to centralize personal data collected for humanitarian purposes. However, owing to its mandate and the nature of its modes of action, the ICRC will not provide information for use in criminal investigations.
  - E. For this reason, ad hoc agreements on the sharing of personal data should be encouraged between the players, in particular if one of them is the ICRC.
  - F. **Annex X** sets forth *the ICRC's position on the centralization and sharing of data*.
- 39.4 With regard to the **collection of information** as such:
- A. the emphasis must be on:
    - a. the collection of accurate data (establishing the facts) as the first step in addressing any problem;
    - b. defining the type and quality of information needed on the basis of a standard checklist that must be adapted to each context;
    - c. ensuring that the collection of information never endangers the person doing the collecting or the source of the information; the first principle should always be to act in the best interests of the victim or to do no harm;
    - d. the collection of reliable information on:
      - I. the context,
      - II. incidents, **events** which have led / could lead to persons becoming unaccounted for,
      - III. **the persons** concerned by these events;
  - B. standard data-collection forms are needed to ensure that the appropriate data are collected and to facilitate the sharing of data.
- 39.5 **At the national / country level**, there should be one central country database to centralize information on missing persons:
- A. the particulars of missing persons should be collected by humanitarian, national and international organizations;
  - B. they should be collected according to agreed standards;
  - C. organizations collecting data should be properly trained and monitored by international organizations; they can seek advice from the ICRC;
  - D. within each country, one single agency should be responsible for maintaining the central database at a secure place;
  - E. the central database should be designed in keeping with an internationally compatible agreed format;
  - F. access to the central database should be defined in compliance with the rules governing the protection of personal data.
- 40. Legal protection of personal data and human remains**
- 40.1 Information (data and samples) is a powerful tool when used correctly and dangerous when misused. In other words, the collection of information is a source of great benefits and major risks; the risks include threats to personal security, invasion of personal privacy and misuse / abuse of information, e.g. the exploitation of information for purposes other than those for which it was collected.
- 40.2 All those involved must therefore work within a defined framework and respect the legal rules governing the protection of personal data and human remains (see 26 and 36).
- 40.3 **Annex C** discusses the *Legal protection of personal data and human remains* in terms of principles based on existing international, regional and domestic law. These principles must serve as a basis for all those involved, in particular in situations where domestic law is deficient or not applicable.
- 40.4 The importance of the following principle is stressed: personal data and samples may not be used, disclosed or transferred for purposes other than those for which they were collected without the consent of the person concerned, except if required by a substantial public interest or for the protection of the vital interests of the person concerned or of others.

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### VII Operational best practices regarding measures to be taken to prevent people from becoming unaccounted for

#### 41. Fostering a context in which persons are less likely to become unaccounted for

- 41.1 State authorities and armed groups must take action, as the case may be with the support of international, regional and local governmental and non-governmental humanitarian and human rights organizations and of the ICRC, to:
- A. **establish control through a strict chain of command within armed and security forces and armed groups**, in order to ensure that effective supervision is possible (see 19.1 and 29.2);
  - B. **ensure that anyone** at any level who is **responsible for violations of the rules can be brought to justice** and is punishable by appropriate sanctions (see 19.2C.a and 29.3D);
  - C. **establish an ombudsman's office**;
  - D. **ensure administrative registration** (for example at birth, or of immigrants and refugees) **of persons at risk** (see 24.2 and 34.2);
  - E. **ensure that personal identity documents are made easily available** to all adult citizens and that children have their own personal ID (see 24.2 and 34.2);
  - F. **ensure that deaths are duly registered** (see 23 and 33);
  - G. **ensure that official regulations meeting internationally recognized standards are issued on arrests, capture, detention, imprisonment or captivity** and include:
    - a. regarding international law:
      - I. applicability in international armed conflicts (see, 10.7, 10.9, 10.10, 10.12 to 10.15 and 10.32 to 10.40);
      - II. applicability in non-international armed conflicts (see 11.3, 11.5, 11.6, 11.8, 11.9, 11.21 to 11.23, and see 11.31 referring to rules 10.12, 10.13 and 10.32 representing customary international law);
      - III. applicability in internal violence (see 12.2 to 12.6, 12.8 to 12.12, 12.20 and 12.21);
    - b. recommendations for the development of international and domestic law (see 19.4, 21, 29.1 and 31);
  - H. **ensure that procedures, directives or instructions are issued to members of armed and security forces / armed groups and military forces serving in peace-keeping and peace-enforcement units** and include:
    - a. regarding international law:
      - I. applicability in international armed conflicts (see 10.6, 10.17, 10.19 to 10.22, 10.29, 10.30, 10.42, 10.43 and 10.57);
      - II. applicability in non-international armed conflicts (see 11.2, 11.10, 11.12 to 11.15, 11.19, and see 11.31 referring to rule 10.29 representing customary international law);
      - III. applicability in internal violence (see 12.2, 12.18 and 12.23);
    - b. recommendations for the development of international and domestic law (see 22.4, 24.1, 29.2, 32.3 and 34.1);
  - I. **provide proper instruction for members of armed forces and armed groups in the rules of both international humanitarian law and international human rights law and in effective military, policing and investigative techniques**, so as to enable them to perform their duties without committing abuses (see 19.3 and 29.4);
  - J. **establish an Information Bureau and a Grave Registration Service** (see 10.55, 10.63, 24.4, 34.4 and 82).

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### 42. Specific measures aimed at protecting all individuals from becoming unaccounted for

- 42.1 Respect for the **right to exchange news** is an essential means of preventing **individuals** from becoming unaccounted for.
- A. This right has to be reaffirmed as fundamental and of high priority; State authorities and armed groups must be reminded of their obligations in this regard.
    - a. The violation of the right to exchange news with relatives should be considered a violation of the right to family life. The systematic and/or persistent violation of this right should be considered cruel or inhuman treatment. (see 22.2).
    - b. All effective legislative, administrative, judicial or other measures, including penal sanctions in appropriate cases, should be taken to ensure respect of the right to exchange news. (see 22.1 and 32.1C).
  - B. "Family" must be defined in each context on the basis of social structure and cultural habits. The definition should be as broad as possible and include, for example, close friends, who can be instrumental in indirectly (re)establishing contact between family members. The definition must nevertheless ensure family news is not used for political ends.
  - C. The population groups most at risk of losing contact with relatives are:
    - a. the members of armed forces / armed groups (and religious and medical personnel);
    - b. isolated populations, civilians in conflict areas, displaced persons, refugees, and populations in areas in which there is an established pattern of risk;
    - c. persons deprived of their liberty;
    - d. vulnerable persons, such as children, the elderly and the handicapped;
    - e. aid and humanitarian relief workers.
  - D. The Red Cross / Red Crescent family news network is essential and must be supported by all those involved as a priority. Other organizations and their means must be seen as being complementary to the network, not as substitutes for it.
    - a. The ICRC should systematically assess the need for, set up and facilitate the development of the network.
    - b. The ICRC should coordinate the network whenever possible.
    - c. The ICRC should regularly evaluate the efficiency and quality of the network.
  - E. Preventive measures must be taken both to avoid a breakdown in communication between family members and to restore and maintain family contact. Those measures include:
    - a. requesting all State authorities and armed groups to abide by their obligations and to allow the ICRC and other organizations to provide the necessary services;
    - b. training the families to plan for emergency situations, e.g. to decide on hiding places, meeting points and persons of contact (outside the area of armed conflict or internal violence);
    - c. making the families aware of the need to evacuate their most vulnerable members to a safe place in the knowledge that such evacuation and separation may last longer than just a few days;
    - d. making the members of armed forces / armed groups part of the communication network;
    - e. ensuring the National Red Cross / Red Crescent Society has the capacity to provide tracing services;
    - f. making all those potentially involved aware of the importance of their participation in a family news network;
    - g. providing identity documents for certain persons, women for example, and for vulnerable persons (e.g. minors, the handicapped, the elderly);
    - h. teaching young children their names and always to carry their ID with them.
  - F. **Annex D** contains a *checklist on the means and methods of restoring and maintaining family contact*.
- 42.2 **Members of armed forces and armed groups**
- A. The identification of members of armed forces / armed groups is a key means of preventing persons from becoming missing as a result of armed conflict. Proper identification is crucial to accounting for persons reported missing as a result of such situations.
  - B. All armed forces and armed groups must provide their members with means of identification (see 10.57, 24.1 and 34.1) that include:
    - a. personal records,
    - b. identity cards,
    - c. identity discs, which constitute the absolute minimum.

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- C. **Identity discs** help to establish the status of persons who fall into the hands of the adverse party and the identity of those who have been severely wounded or killed in action. They are recognized as the only means of identification that is simple, secure and durable. As such they are the absolute minimum to be provided to all members of armed forces and armed groups.
  - D. Required resources and cooperation mechanisms
    - a. Although simple, hand-operated presses are relatively inexpensive, they are often beyond the means of the regular and irregular forces of developing countries. Those countries therefore need to borrow the presses on a temporary basis or receive them as an outright donation.
    - b. If insufficient resources are cited as the reason the armed force or group has no identification system, not even identity discs, the truthfulness of that claim must be clearly established. The basic argument is that if there are sufficient resources to arm the troops then there are sufficient resources to provide them with proper identification.
    - c. More often than not, the fundamental reasons that troops do not carry proper identification are lack of political will, weak leadership, inadequate training and poor discipline. Troops who understand that wearing identity discs is the single most important factor in ensuring that their remains are properly identified and that their families are not kept in a state of uncertainty about their status will be motivated to wear them.
    - d. If lack of resources, including knowledge and technical and administrative skills, is the reason why troops do not have proper means of identification, then arms carriers can call upon States or international bodies for assistance. Organizations such as the AU/OAU, ASEAN, NATO, the OAS, the OIC and the OSCE, or peace, democratization and development actors, or the ICRC should be able to provide assistance in this respect.
  - E. **Annex E** provides a *checklist* of what the means of identification mentioned under B above must / should contain, and includes information on the format, material, production and use of identity discs.
- 42.3 Measures to protect **civilians** from becoming unaccounted for include:
- A. heightening awareness, providing training and motivating attitude change;
  - B. fostering a network of solidarity (using the media, interest groups, civil society);
  - C. studying existing structures / practices that facilitate people to become unaccounted for;
  - D. identifying people at risk, including vulnerable groups;
  - E. monitoring persons and patterns;
  - F. obtaining information from the State authorities and armed groups;
  - G. supporting judicial procedures on violations of the law and abuses;
  - H. activating and empowering national humanitarian and human rights institutions and organizations;
  - I. ensuring access to the civilian population by humanitarian organizations in any circumstances;
  - J. taking appropriate diplomatic measures so that lobbies can work for the benefit of potential victims.
- 42.4 Measures to protect **persons deprived of their liberty** from becoming unaccounted for include:
- A. ensuring they are identified;
  - B. ensuring information on them is collected, verified and recorded;
  - C. performing risk analysis;
  - D. informing the next-of-kin;
  - E. informing lawyers and/or other appropriate persons and actors;
  - F. fostering a network of solidarity (mobilizing others, using the media, interest groups, civil society);
  - G. tracing activities;
  - H. *habeas corpus* and other domestic legal remedies;
  - I. approaching regional or universal international mechanisms such as the Inter-American Commission on Human Rights or UN special rapporteurs;
  - J. ensuring visits by the ICRC and other mechanisms;
  - K. providing alternative detention capacity in third countries.

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- 42.5 Measures to protect **other persons at risk** from becoming unaccounted for include:
- A. analyzing the risk (mapping, priority, pattern);
  - B. establishing an early warning system;
  - C. establishing a communication system, and if necessary providing communication facilities;
  - D. empowering the victims to protect themselves by defining emergency procedures (ringing warning bells, developing an escape option, etc.);
  - E. registering persons at risk;
  - F. developing scenarios for evacuations aimed at saving lives;
  - G. protecting the family unit;
  - H. accessing adoption records (to prevent hasty adoptions);
  - I. developing emergency protocols (how to behave in case of a problem, who is doing and responsible for what, etc.);
  - J. promoting the application of domestic legal remedies;
  - K. requesting and facilitating physical and/or State protection (checkpoints, guards, patrols, peace volunteers, etc.);
  - L. defining and implementing appropriate "protected areas" in compliance with the required conditions;
  - M. activating international / regional protective mechanisms including by means of an international presence;
  - N. ensuring the protection of refugees, in particular respect for the principle of *non-refoulement* and for every individual's right to seek refuge.
- 42.6 All the specific measures aimed at protecting persons from becoming unaccounted for listed above imply that information on events or persons will be collected, used and managed with a view to:
- A. act on patterns of violations and in favour of individuals;
  - B. promote accountability;
  - C. establish a truthful historical record.
- 42.7 The emphasis must be on coordination and on the sharing and centralization of information, and thus on the need for standard data-collection forms ensuring appropriate data are collected and shared (see 39):
- A. **Annex F** and **Annex G** contain *checklists of the information to be collected* respectively *on events* and *persons*, to be adapted to each context;
  - B. **Annex H** contains a *checklist for the collection of direct witness accounts*, also to be adapted to each context.

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### VIII. Operational best practices regarding the families of missing persons

#### 43. General considerations

- 43.1 The most fundamental need of the families of missing persons is information on the fate of their relatives (see 38.3 and 38.4).
- 43.2 While they await clarification of their relatives' fate or notification of death, the families of missing persons face specific needs. These needs vary from context to context and over time; they have to be (re)assessed accordingly.
- 43.3 All those dealing with the families of missing persons have an obligation to assess the local context, culture and society and the role played by the State authorities and armed groups, and to prepare their employees accordingly.

#### 44. Specific needs

- 44.1 While the families of missing persons undergo much the same experiences as the rest of the population affected by armed conflict or internal violence, the additional problems associated with the disappearance of a family member vary according to the context and can have consequences on their situation that give rise to unique needs.
- 44.2 Most missing persons are adult men; in some instances several people from the same family may even be unaccounted for. Many families of missing persons thereby lose their breadwinner and are headed by women.
  - A. Throughout the world, women have more limited access to education and professional training than men.
  - B. In many cultures, the traditional role of the woman is in the home, and there is little possibility for her to earn a living.
  - C. Women are more vulnerable in armed conflict and internal violence to sexual violence.
- 44.3 In certain contexts, fear and mistrust among the population makes it impossible for the families to be open about their situation.
  - A. The families risk political reprisals or ostracism from their communities and therefore do not receive support which may otherwise be available.
  - B. They may become isolated from society because of the local culture, their undefined position in society (i.e. neither wife nor widow), fear or their psychological state, for logistical reasons (such as physical distance and/or lack of transport / time) or lack of resources.
- 44.4 The families of missing persons have been found to have more stress-related disorders than other families, including those whose relatives are known to be dead.
  - A. In addition to losing a relative, these families are also living in or have lived through armed conflict or internal violence, during which they will very probably have experienced other traumatic events such as displacement from their homes, threats to their lives and physical violence, or witnessed such events.
  - B. Small children in particular exhibit more signs of distress and may temporarily lose certain acquired abilities, while adolescents often resort to "acting out" and perform poorly at school (although the latter may also be connected to the inability of the families to pay school fees).
  - C. Interviews about traumatic events, such as the disappearance of a relative, have the potential to cause additional trauma. Repeated interviews by a variety of organizations therefore increase the psychological burden on the families of missing persons.
- 44.5 In most contexts there is no comprehensive domestic legislation regarding the legal situation of persons missing as a result of armed conflict or internal violence and therefore (see 35):
  - A. there are no entitlements or support for the families, as there might be for the widowed, for example;
  - B. the undefined legal status of the spouse of a missing person has consequences in terms of property rights, the guardianship of children, inheritance and, later, the possibility of remarriage.



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- 44.6 The families of missing persons may be unable to obtain satisfaction from the legal process:
- A. because there is no legal process to turn to, or they are reluctant to trust the existing authority as the information they give may be used for purposes that are not in their interests;
  - B. because time has passed since the disappearance and the evidence collected, if any, is irrelevant;
  - C. owing to fear for the personal safety of witnesses who are threatened by reprisals;
  - D. because they do not have confidence in their national judicial system.
- 44.7 The families may lack information on:
- A. how to proceed in the search for their missing relative;
  - B. how to apply for financial or material support;
  - C. how to obtain legal advice.
- 44.8 The families may find it difficult to communicate with relatives and friends who are at home, have been displaced internally or are refugees.
- 44.9 In addition, staff working with the families of missing persons might themselves be affected.
- A. Individuals who work with trauma victims, who listen to their experiences in an empathetic manner and with a desire to ease their suffering, may themselves be affected. This phenomenon has been extensively studied and is known as "vicarious" or "secondary trauma". It can have a significant impact on the personal emotional health of the workers, their job performance and their attitude towards their work.
  - B. Because of the sensitive nature of working with the families of missing persons, as concerns both expatriates and national employees, it is essential that all those involved make sure that the workers concerned receive adequate training and ongoing support. They must not only provide training in the skills required effectively to address the families' psychological needs, but also to help staff avoid becoming traumatized themselves.

### 45. Support for the families of missing persons

- 45.1 The specific needs of the families of missing persons must be addressed by:
- A. the authorities concerned, who bear primary responsibility;
  - B. the community of States;
  - C. international, regional and local governmental and non-governmental organizations and by the ICRC.
- 45.2 Such needs may not be met by general assistance programmes:
- A. during an emergency phase it may not be possible to address more than the basic needs for food, shelter and physical safety;
  - B. however, even while armed conflict or internal violence is ongoing and as soon as circumstances allow, targeted assistance must be provided to these victims.
- 45.3 The specific needs of the families of missing persons should be assessed in each context and periodically reassessed as the situation evolves.
- 45.4 The role of the families as the main activists should be emphasized. The families and children concerned and the local communities must be involved to the greatest extent possible in the definition, planning and implementation of assistance programmes to ensure that those programmes are relevant.
- 45.5 Any programme or activity addressing the families' needs should be adapted to local circumstances and aim to promote social reconstruction and reconciliation in the community. It must:
- A. be culturally and socially adapted;
  - B. respect and build on local expertise;
  - C. adopt a community-based and interdisciplinary approach, aimed at the programme's sustainability;
  - D. involve cooperation based on equal partnership and mutual cultural respect;
  - E. encompass a family-empowerment process that promotes "self-help" and focuses on the families' resilience and strengths;
  - F. promote respect for and the development of local resources and coping strategies;
  - G. stimulate awareness of the consequences of traumatic stress and destigmatize the families' plight.

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45.6 The programmes should have built-in monitoring and evaluation mechanisms as an integral part of the ongoing project cycle.

### 46. Material and financial support

46.1 Food, shelter and physical safety must take precedence in all situations.

46.2 The families of missing persons require material and financial assistance. Of special concern in this respect are single heads of family and unaccompanied children, whose physical safety must be given priority.

46.3 Programmes should aim to promote the families' self-sufficiency and thus include adequate occupational training at the earliest possible stage.

46.4 Programmes must put particular emphasis on continued schooling in the children's own environment.

### 47. Social support

47.1 Awareness must be raised of the social consequences for the families of missing persons, in order to destigmatize their social situation and help them rebuild their social identity.

47.2 The terminology used should reflect the families' strengths and resilience, rather than their weaknesses and needs.

47.3 Children whose parents are both unaccounted for need to be protected, and they must be reunited with and cared for by members of their extended family or community. They should be schooled in their own environment. (See 14, 15, 16, 25 and 35.)

47.4 The resilience of children should be recognized. The children of missing persons should not be considered only as victims needing protection, but also as active partners and provided with information about the fate of their parents.

47.5 The need for the families to communicate with relatives both within their country and abroad must be recognized. They must be given the opportunity to use the Red Cross / Red Crescent network whenever needed (see 42.1).

### 48. Psychological support

48.1 Programmes providing psychological support and, when necessary, psychiatric treatment should be set up to help the families adapt to their altered situation and come to terms with the events.

48.2 In order to be effective, such programmes should be supervised by appropriately qualified professionals who can define clear objectives and identifiable evaluation indicators.

48.3 Such programmes should be built on the local mental health, primary health care and healing systems, in order to be adapted to the cultural context and habits. Those systems must therefore be supported and reinforced.

48.4 Specific psychological support for the families of missing persons should be systematically planned and provided as an integral part of the processes by which *ante mortem* data are collected and human remains exhumed, identified and returned to the families.

### 49. Legal needs

49.1 In peacetime, or at the latest when armed conflict or internal violence break out, the State authorities must incorporate into their domestic legislation administrative recognition of the legal situation of persons missing as a result of armed conflict or internal violence (see 25 and 35).

49.2 Justice must be done through a fair judicial process and when relevant through complementary mechanisms such as truth commissions, reparations programmes or ombudsman offices (see 85 to 90).

A. Said mechanisms are to be implemented by the authorities, possibly with the support of international, regional and local governmental and non-governmental organizations.

B. The families should be assisted in their endeavours vis-à-vis the judicial authorities to obtain accountability and reparation.

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### 50. Coordination of assistance

- 50.1 It is essential that all those involved with the families of missing persons coordinate their activities.
- 50.2 Mechanisms with exclusively humanitarian aims should be established, whenever necessary, with the support of a neutral and independent intermediary such as the ICRC:
  - A. to ensure coordination and complementarity between those running family support programmes;
  - B. to ensure increased data-sharing:
    - a. whenever needed, for known, exclusively humanitarian reasons;
    - b. with the consent of the families / individuals concerned;
    - c. in compliance with the legal provisions governing the protection of personal data.
- 50.3 Information on the assistance available to the families of missing persons needs to be compiled centrally (i.e. by one organization) and distributed to the relevant organizations and to the families.

### 51. Families and death

- 51.1 To show respect for the dead and for funerals held according to the local culture is to demonstrate respect for the mourning process, which is essential for peace and social order.
- 51.2 Mourning practices vary widely, and perceptions of death differ from one culture and religion to another: death can be an end, a passage to reincarnation or an achievement. This influences the mourning process and must be taken into account in any contact with families concerning death.
- 51.3 As a general rule, death and the practices associated with death are specific to each local culture. To prevent funerals and other mourning practices is to make the dead and the living incur a risk.
- 51.4 Most religions and belief systems also have rituals for missing persons due to armed conflict or internal violence.
- 51.5 There should be respect at all times for the cultural identity of refugees and displaced persons, who should therefore be given the opportunity to hold appropriate funerals and commemorations.
- 51.6 The State authorities and armed groups must show respect for the dead and for the mourning practices of all communities and individuals in all circumstances.
- 51.7 Humanitarian organizations can make mourning processes easier for the communities by obtaining information on local practices and respecting them in all activities related to death (e.g. when transmitting information about death, returning human remains or personal effects, exhuming or identifying human remains, or burying the dead, even temporarily).
- 51.8 Staff informing families of the death of a relative, or returning personal effects or human remains, must be prepared.
  - A. **Annex I** lists a number of *Considerations on the meaning of death and recommendations for appropriate behaviour*. Workers should have at their disposal a document describing how death is perceived in each context, the associated rituals, the role of the remains in the mourning process and, depending on the existing external constraints, how to deal with the absence of remains.
  - B. They must also be trained and supported psychologically for those tasks in order to avoid developing secondary trauma (see 55).

### 52. Delivering information on death and returning personal effects or human remains to the families

- 52.1 The only prerequisite to mourning is the belief that the missing person is dead. Until adequate proof of death can be provided, relatives of missing persons cannot mourn and may experience feelings of guilt. A death certificate alone might not be enough to induce belief in the death of a missing person.
- 52.2 The State authorities that issue death certificates have a responsibility, as does the ICRC when it delivers information on deaths, to ensure the authenticity of the information contained therein; the certificates should provide information on the cause of death and the availability of the human remains. The authorities and organizations delivering death certificates should also obtain information on the certificate's significance in the local culture.
- 52.3 Unless the human remains have been discovered or the family is already convinced that the missing person is dead, the death certificate or attestation will not in and of itself initiate the mourning process. It is useful, however, for legal and administrative purposes.
- 52.4 Where the criteria for certifying death are not met, a declaration recognizing the individual's legal situation as a missing person could first be issued (see 49).

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- 52.5 In order to be credible, the death certificate must be:
- A. accompanied by evidence;
  - B. based on reliable information;
  - C. issued on an individual basis;
  - D. issued and delivered promptly.
- 52.6 Any organization that delivers notifications of death should appoint and train persons specifically for that task (see 51.8 and 55).
- 52.7 The process of informing the families about the death of a relative and of returning personal effects or human remains must be well prepared:
- A. the family member to whom the information, personal effects or human remains are to be delivered should be determined in advance on the basis of local custom;
  - B. whenever possible and reasonable, an appointment should be made in advance to ensure the presence of family member(s) whose presence is required; it is important that relatives are not alone when the news is delivered and that children are not excluded;
  - C. those delivering the information, personal effects or human remains could be accompanied by a culturally appropriate support person (such as a community or religious leader or a health worker) who is in a position to provide the necessary support.
- 52.8 Before returning human remains, the following should be considered:
- A. how the remains will be delivered;
  - B. the state of the remains, so that the family can be advised on and prepared for the possibility of viewing them;
  - C. the emotional and financial support to be offered to the family during the funeral;
  - D. the wishes of the family with regard to any additional remains found.
- 52.9 Consideration should be given to the possibility of additional information about the deceased coming to light after the remains have been delivered.
- 52.10 An official document confirming death and paving the way for the legal consequences should be transmitted to the family whenever possible (and when doing so serves a humanitarian purpose), in accordance with the rules set forth in 52.5 above.
- 52.11 In some cultures and religions, a specific ceremony such as a rite of passage may serve to initiate the mourning process.
- 52.12 Support should be available to the families throughout the mourning process. Access to such support could be facilitated by the appropriate organizations if it is not already available in the community.

### 53. Commemorations and collective funerals

- 53.1 Commemoration is a significant event in the process of mourning:
- A. it can foster or inhibit reconciliation at the individual and national levels;
  - B. it can also remind the public of past inhumanities and thus help prevent their reoccurrence and future human rights violations.
- 53.2 Commemoration plays the following roles:
- A. it encourages the process of mourning and remembrance by allowing the families and communities to grieve together;
  - B. it provides moral support which comforts and helps relatives and friends to cope with the situation;
  - C. it reaffirms the existence of missing relatives of whom all other trace may have disappeared;
  - D. it humanizes the event and makes it more personal, for example by naming those who are unaccounted for and making them someone's son, daughter, parent, etc.;
  - E. it pays tribute to the missing and provides acknowledgement and public recognition of events that may have been denied or distorted;
  - F. it acts as a form of redress, restoring honour to those who have been wronged;
  - G. it highlights the significance of past events;

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- H. it serves as an instructive reminder to present and future generations, by transforming existing rituals or devising new ones;
  - I. it fosters reconciliation at the individual, community and national levels;
  - J. it provides a site to visit in the absence of a grave;
  - K. it allows the souls of the dead to rest in peace.
- 53.3 The planning and preparation of commemorative ceremonies are important parts of the process and should be under the control of the families and communities concerned.
- 53.4 Commemoration should be culturally appropriate and centred on the victim. It can be an ongoing process of many events or take a variety of forms, such as monuments.
- 53.5 The local authorities should be encouraged to provide material support for commemorative ceremonies or to participate in other ways, for example by naming streets after missing persons.
- 53.6 If possible, the State authorities should acknowledge the event by declaring a day or a ceremony of commemoration.
- 53.7 The public's presence at such events is important, particularly if the authorities played a role in the violations, but any external presence should be strictly supportive, and care should be taken that such events do not become politicized.
- 53.8 The media should be encouraged to support commemorations on behalf of the families.
- 53.9 The families should be informed about the possibility of collective funerals and support should be provided to secure the process, even if the families regard them as a second-best option.
- 53.10 In acknowledgement of the above-mentioned principles and best practices, humanitarian organizations should support and attend commemorations.

### 54. The role of family associations and family networks

- 54.1 Because of the diversity of cultures and contexts, no ideal formula exists that can be applied to family networks globally and nothing should be imposed on the families of missing persons.
- 54.2 Family networks can play an important role at several levels. They can:
- A. provide collective support;
  - B. emphasize the role of the families as the chief activists on the issue of missing persons (and not only as victims);
  - C. act as pressure groups on policymakers;
  - D. bring recognition to the issue and to the problems faced by the families;
  - E. make sure the authorities in charge of ascertaining the fate of missing persons do not neglect their duties.
- 54.3 The **status** of family associations and networks
- A. The status of a family association or network may change over time and depending on the context.
    - a. The association may develop in phases:
      - I. starting as an informal group,
      - II. becoming formalized but not officially registered,
      - III. and ending up as a registered, non-profit organization.
    - b. It may be part of an existing non-governmental organization (e.g., one that is active in the human rights field).
  - B. Family associations should maintain their independence.
- 54.4 In terms of **objectives**, family associations and networks:
- A. must be representative of their members: individual opinions should be voiced through democratic processes, and outside issues taken up on the basis of internal informed consent;
  - B. provide material and psychological support for their members: by bringing the families together and allowing them to relate to other people going through similar experiences they can not only provide psychological and social support but also help alleviate feelings of isolation and vulnerability;
  - C. bring recognition to the issue of missing persons and the problems faced by the families;
  - D. make sure the authorities in charge of ascertaining the fate of missing persons are not allowed to neglect the issue and put pressure on them to support the families;

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- E. facilitate judicial proceedings for their members (for example by providing legal counselling or hiring lawyers);
- F. help the families and others exchange information on and comprehend the measures taken to ascertain the fate of missing persons and the results obtained;
- G. participate in the decision-making process and channel community-based support programmes;
- H. contribute to respect for and the promotion and implementation of international humanitarian law and international human rights law;
- I. advocate for the adoption of measures to prevent people from becoming unaccounted for, to protect detainees and to safeguard the lives of all persons.

### 54.5 The strengths and constraints of family associations and networks

- A. The strengths of family associations lie in the fact that the members are extremely motivated and therefore active; they are courageous and seek the truth.
- B. Family associations also work under a number of constraints.
  - a. They represent a group of traumatized people who are emotionally involved in the issue and frequently work under difficult circumstances. In addition to past traumas, they may also have to cope with difficulties such as loss of housing, displacement / refugee status, loss of income and lack of outside support.
  - b. Because membership is based on the mutual tragedy of having a missing relative, family associations do not necessarily possess the skills needed to carry out the activities required of an association, such as management, fund-raising, etc.
  - c. The members' emotional involvement makes them more vulnerable to disappointment, frustration and depression, all of which are tiring and likely to affect the group as a whole.
  - d. Family associations have to be prepared to cope with continuous external threats or internal disputes about objectives or strategies; there might also be competition between members and between groups who, while all representing families of missing persons, may represent opposing political parties or groups. Instead of developing a sense of solidarity, they fragment and lose potential power. This risk can be mitigated by, for example, adopting democratic procedures, acting transparently, drafting statutes, holding elections, etc.
  - e. In each culture, local circumstances and resources have to be taken into account when a family association is established.
  - f. Family associations have to be aware of the risk of political manipulation. They can reduce this risk by obtaining funding from multiple donors, by safeguarding their independence and by requesting transparency.

### 54.6 Development - Family associations or networks should:

- A. be created by local initiative only;
- B. take into account the local culture, circumstances and resources;
- C. identify a suitably charismatic person to take the lead and voice the members' opinions vis-à-vis the authorities concerned;
- D. put in place democratic and transparent procedures, statutes, elections, etc.;
- E. respect the legal provisions governing the protection of personal data;
- F. not go public, in particular on individual cases, without a democratic decision and the consent of the families concerned;
- G. define their missions and strategies with an emphasis on common goals and humanitarian issues; as the latter may evolve over time, the former should be regularly reassessed;
- H. look for allies with special skills, in particular in:
  - a. capacity-building,
  - b. operational management,
  - c. financial management,
  - d. fund-raising;
- I. obtain access to a governmental or independent body that is able and willing to provide information and financial support to family associations;
- J. seek material and financial support from sources that do not compromise their independence;

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- K. encourage cooperation and networking with other associations regardless of their affiliation;
- L. establish transparency in their relations with external partners and within the family association and encourage dialogue.

### 54.7 Support for family associations

- A. The development of civil society, particularly the promotion and support of the representative nature, independence and self-sufficiency of family associations and other partners within civil society, must be encouraged.
- B. This task must be addressed by:
  - a. the authorities concerned, who bear primary responsibility;
  - b. the community of States;
  - c. international, regional and local governmental and non-governmental organizations and the ICRC.
- C. Support for family associations and networks should aim to:
  - a. promote the representative nature, independence and self-sufficiency of the associations within civil society;
  - b. develop the associations' capacities while taking care not to duplicate existing services;
  - c. develop the association's capacity to raise awareness by encouraging links with other NGOs and the (inter)national media;
  - d. provide backing for projects planned and implemented by family associations;
  - e. develop the management capacity of family associations, including financial management and fund-raising skills;
  - f. open training and support programmes intended for the staff of organizations working with the families of missing persons to community personnel and members of the association;
  - g. promote relations between associations and back the establishment of a federation of associations at the national, regional and international levels.
- D. Those providing support for family associations and networks must act as facilitators and not as manipulators.
- E. Organizations must refrain from using family associations for their own political ends.

## 55. Training and support for personnel working with the families of missing persons

- 55.1 Any field work should be preceded by briefings by an expert with local experience, such as an anthropologist, and include information on the society and on the cultural and religious aspects of mourning, grief and funeral customs.
- 55.2 Specific training should be given by professionals to all staff (including forensic specialists) on:
  - A. the potential psychological reactions experienced by trauma victims;
  - B. the risk of secondary trauma to those working with trauma victims;
  - C. the means by which staff can protect themselves against secondary trauma and burnout.
- 55.3 Ongoing training should provide continued support to workers and deal with particular problems arising from their work.
- 55.4 A qualified person should regularly debrief the teams working with the families of missing persons.
- 55.5 Staff holding management positions should be trained in the management of staff affected by stress.
- 55.6 Employees should be encouraged by their supervisors to take sufficient time off to help prevent burnout.
- 55.7 Special training should be provided to prepare workers for any activities that may provoke particularly strong emotional reactions among the relatives of missing persons. This preparation would help avert secondary trauma and should relate to activities such as delivering information about death, collecting *ante mortem* data or returning personal effects or human remains.

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### IX. Operational best practices regarding the management of human remains and information on the dead

#### 56. General considerations

- 56.1 Persons who die as a result of armed conflict or internal violence often become unaccounted for because their deaths are not recorded. This may happen for a number of reasons:
- A. no information on deaths is made available (deaths are not reported to the families / no surviving witnesses);
  - B. the bodies / remains (for example of those killed in action or in extrajudicial killings) are not collected;
  - C. bodies are buried without being identified (or without any data / particulars that may be useful for later identification being recorded), often in mass graves, a situation sometimes compounded by deliberate attempts to confuse / destroy evidence;
  - D. the bodies / remains cannot be identified (for lack of indices / leads, expertise or means, or because the bodies / remains have been totally destroyed);
  - E. the parties may be genuinely unable to provide answers, often because they did not fulfil their duties during the conflict. In the majority of cases, however, the parties can reasonably be expected to have, at the very least, information about the location of military operations and of (mass) graves, or to obtain such information;
  - F. the State authorities or armed groups refuse to acknowledge the deaths of people under their control / responsibility.
- 56.2 Therefore, providing information on those who die in such situations directly helps reduce the number of missing persons and ascertain the fate of persons who are unaccounted for, thus putting an end to the anxiety and uncertainty of the families. (See 38.3 and 38.4.)
- 56.3 The State authorities and armed groups bear primary responsibility for proper handling of the human remains and of information on the dead.
- 56.4 Despoliation and desecration of the dead should constitute crimes under international law when committed during non-international armed conflicts (as is the case in international armed conflicts). Intentionally mutilating the remains before their repatriation as part of a widespread and systematic policy should be considered an aggravated form of the crime. Intentionally obstructing, interfering with, or impeding the process of identification of human remains for the purpose of preventing said identification should be punished as a criminal offence under domestic law. (See 23.5, 23.6 and 33.5.)
- 56.5 The community of States, international, regional or local governmental or non-governmental organizations and the ICRC should make all those concerned aware of their obligations with regard to the handling of human remains without distinction. This includes the obligation to collect human remains and any information on them that may lead to identification at some later stage. It also includes the conditions that must be respected for all burials, for the return of remains and personal effects to the families, if necessary via a neutral intermediary, and for the transmission of all information pertaining to the dead to the families and to the ICRC Central Tracing Agency. (See 10.47 to 10.53, 10.63, 11.4, 11.27 to 11.29 and see 11.31 for rules 10.49, 10.51 and 10.52 representing customary international law; see also 23 and 33.)
- A. Further obligations should include:
    - a. the promotion of related Information Bureau activities (see 10.55, 24.4, 34.4 and 82);
    - b. the promotion of best practices regarding the collection of information on the dead and the management of human remains and training in their implementation (see 57).
  - B. Priority should be given to:
    - a. the State authorities, in particular security and armed forces and civil defence units, and armed groups;
    - b. National Red Cross / Red Crescent Societies with first aid and tracing services;
    - c. peace-keeping / enforcement missions;
    - d. the humanitarian organizations working in a given context;
    - e. forensic specialists;
    - f. tribunals.
- 56.6 **Annex J** contains a *checklist of the information on the dead to be provided by the authorities*.



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- 56.7 Where the State authorities or armed groups are unable / unwilling to fulfill their obligations and the dead are not taken care of, humanitarian organizations must address the problem from the beginning of armed conflict or internal violence with the support of the community of States.
- A. Information about **graves** and the **dead** should be systematically collected:
  - B. Whenever required and as soon as possible, measures must be taken to **collect the dead** (from the battlefield) **and to exhume unidentified remains**.
  - C. Measures must be taken to collect as much information as possible on any human remains and the event which led to the deaths:
    - a. to facilitate their identification so the families can be informed and receive the remains;
    - b. if violations of international humanitarian law or international human rights law are suspected, information must be collected on the circumstances of death.
  - D. Measures must be taken to preserve any human remains that are not returned to the families (by storing or temporarily burying them).
  - E. Measures must be taken **to inform the families** when a relative has died, to provide them with certificates / attestations of deaths, and to return to them personal effects and whenever possible the remains.
- 56.8 In most situations, all information on the dead, whether on individuals or on the location of mass graves, is politically sensitive and a source of anguish for the families. Thus:
- A. security constraints must be taken into account when planning action;
  - B. the authorities involved and the families must be fully informed about all planned activities;
  - C. all planned activities must take into account the cultural context and respect local customs regarding the dead, funerals and mourning (see 51);
  - D. a communication strategy must be set up for all planned activities.
- 56.9 All tasks must be performed with due respect for the legal and ethical rules pertaining to the management of personal information and human remains (see 40).
- 56.10 All tasks must be coordinated between the organizations involved, which may have to be mobilized.
- 56.11 In numerous armed conflicts and situations of internal violence, neither death certificates nor official notifications / confirmations of death are provided, either because information is simply not available or because it is withheld. It is therefore essential to collect information about the dead through direct witness accounts.
- A. To ensure the information is accurate, it should be collected systematically. **Annex H** (*checklist for the collection of direct witness accounts*) provides guidance in this respect.
  - B. As witness accounts may be the only information on a relative's death available for transmission to the family, the State authorities should agree to issue death certificates on the basis of witness accounts that fulfill agreed conditions.
- 57. Involvement of non-specialists**
- 57.1 As a general rule, forensic specialists should do all the work involving human remains.
- 57.2 This may not always be possible. Since forensic specialists are not always available, the involvement of non-specialists is often necessary and should aim to maximize the chances of systematic evaluation of the event and identification at a later date. To that end, the checklists contained in **Annex K to Annex P** can be used to streamline the processes by which information is collected on the dead and human remains are handled. These checklists cover:
- A. **Annex K**, *the management of sites containing human remains, including graves*;
  - B. **Annex L**, *information to be collected on human remains*;
  - C. **Annex M**, *the immediate management of human remains (collection / transport)*;
  - D. **Annex N**, *the management of human remains in a hospital mortuary*;
  - E. **Annex O**, *the procedure for exhumation (e.g. from graves, wells, caves) in the absence of forensic specialists*;
  - F. **Annex P**, *emergency or temporary burial of human remains*.

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- 57.3 These checklists, which must always be adapted to the context, should be promoted in particular among armed and security forces / armed groups, military forces serving in peace-keeping and peace-enforcement units, health facilities and humanitarian organizations.
- 57.4 In particular, every military force is responsible for drawing up SOP for commanders and for establishing training modules for its members that incorporate the legal rules and the checklists.
- A. Military forces must recognize that non-specialists, i.e. soldiers, may be involved in the exhumation, transportation, storage and repatriation of remains and need appropriate guidelines and practical checklists. These should be translated into SOP by every military force.
  - B. Specific training should correspond to needs. While the checklists do not constitute information that every soldier should know, every soldier should be instructed in the importance of correct procedures for emergency burials (see **Annex P**, *Check-list on the emergency or temporary burial of human remains*).
  - C. When a party cannot comply with the legal requirements for the establishment of an official Grave Registration Service or an Information Bureau as set out under 82, it can turn for assistance to an international player, but it is not thereby relieved of its legal obligations.
  - D. For any question relating to the management, exhumation, transportation, storage and repatriation of remains it is important to inform and liaise with the appropriate authorities.
- 57.5 Experts in forensic sciences should be used to train non-specialist personnel for these tasks.

### **58. Involvement of forensic specialists**

#### **59. The role and responsibilities of forensic specialists**

- 59.1 The term "forensic science" is a collective term for a group of disciplines. These include: forensic pathology, forensic archaeology, forensic anthropology, forensic odontology, forensic entomology, forensic radiology, forensic fingerprint science, photography, molecular biology and mortuary science.
- 59.2 The role that forensic specialists play in the domestic context cannot be automatically extrapolated to the role they have in contexts involving missing persons; there are some important differences. In the domestic context, forensic specialists work as an extension of the domestic legal process. Identification of remains is an integral part of criminal investigation and goes hand-in-hand with ascertaining the cause of death. However, in a context involving missing persons, especially when the investigation involves the exhumation of mass graves, the cause of death may already be known or be obvious, and identification may be the most difficult and resource-intensive task.
- 59.3 An important consideration is that in the case of a mass murder perpetrated in armed conflict or internal violence, exhumation can provide evidence for criminal investigations even if the individual victims are not identified. The two activities may proceed on separate time scales and with separate resource requirements. This can lead to the unfortunate situation whereby remains are exhumed and the cause of death established but, because the process of identification is much more time-consuming, the bodies re-interred. This situation is unacceptable, as it does not allow the families concerned to be informed of the fate of missing relatives or to receive the remains. Identification for the purposes of informing the family and returning remains is just as important as providing evidence for criminal investigations and constitutes due recognition of the rights of the families.
- 59.4 When conducting autopsies, forensic specialists should recognize the distinction between establishing the cause of death and identification, even though the two may overlap considerably. Identification of bodies of soldiers who have been killed in action may involve no criminal considerations; in contrast, the exhumation of a mass grave may provide all the evidence needed by the prosecution in a criminal case, but it may not be necessary to identify the remains for that purpose.
- 59.5 In brief, while forensic specialists may feel comfortable from an ethical perspective working to uphold human rights and investigating violations of international humanitarian law and international human rights law, they must also respect the families' right to know what happened to their relatives. The work of forensic specialists is necessary to ensure that perpetrators of crimes are prosecuted and that the best is done for the families.
- 59.6 Forensic specialists working in contexts involving missing persons must demonstrate a level of professionalism that goes beyond simply assuring standards of practice.
- A. A professional approach to the issue of human remains can provide the basis for a much needed dialogue between two parties locked in conflict.
  - B. Likewise, it may be possible to show that the enemy's remains are being treated with respect; this may serve as one means of building confidence and even lessening hostilities.

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- C. Professionalism among forensic specialists can be a major factor in promoting international humanitarian law, international human rights law, accountability and a process of reconciliation.
  - D. In brief, professionalism in forensic science implies a degree of respect and neutrality that transcends conflict.
- 59.7 Correct guidelines can serve to empower forensic specialists working in new, difficult or highly political circumstances.
- 59.8 Forensic specialists working in contexts involving missing persons have a duty to pass on their knowledge and experience to professionals from other fields who are working with human remains.
- 59.9 The authorities have well-defined legal obligations when it comes to missing persons. Forensic specialists must be familiar with those obligations as they help to identify where and in what way the results of any forensic work may be manipulated. Forensic specialists must address certain basic issues before exhuming or identifying remains, namely:
- A. how to inform and return remains to the family;
  - B. how to inform and return remains to the proper authorities;
  - C. how criminal justice works in a domestic and international context in which violations of international humanitarian law and international human rights law are being investigated;
  - D. how their work will affect the legal and political process.
- 59.10 Forensic specialists must recommend that a mechanism be put in place whereby the remains will be returned to the family either by the authorities or by someone else who is competent to do so. Thought must be given to the whole process before the forensic specialist becomes involved; it cannot be assumed that the entire chain of responsibility that usually exists in a domestic context is in place.
- 59.11 Forensic specialists wishing to become involved in cases involving violations of international humanitarian law and international human rights law must be aware that they may be called on to work in difficult conditions. Their role and responsibilities may entail examining those who have been killed or injured in circumstances of torture or illegal imprisonment, or other circumstances that amount to such violations. This can place forensic specialists in extremely compromising situations, which may in certain circumstances be tantamount to helping to obstruct justice. Forensic specialists may help obstruct justice:
- A. consciously, by failing to record and effectively document signs of abuse, or by failing to ensure that abuse is reported to the appropriate authorities;
  - B. reluctantly, where their own or professional values are outweighed by pressure from the State authorities or from others;
  - C. unconsciously, where insufficient training or skills results in failure to recognize and record abuses adequately.
- 59.12 Any form of complicity in the obstruction of justice amounts to a breach of the forensic practitioner's professional ethical obligations. Decisions to adhere, or not to adhere, to ethical standards are made consciously or unconsciously by individuals, taking into account other matters such as their own safety and security and that of others.
- 59.13 In short:
- A. It must be recognized that it is a mark of civilization to identify the dead.
  - B. Forensic specialists must be qualified and competent to work in contexts involving missing persons. They should only work within their respective sphere of expertise.
  - C. Forensic specialists have an ethical obligation actively to advocate for an identification process (which includes the collection of *ante mortem* data and in certain contexts of blood samples from the family).
  - D. When examining remains, forensic specialists have an ethical duty to observe and record all information potentially relevant to identification.
  - E. The procedures followed must not destroy material that may be used at a later date.
  - F. Forensic specialists must consider the families' rights and needs before, during and after exhumation.
  - G. Consideration must be given to the disposal of unidentified remains in a way appropriate to the context.
  - H. Human remains comprise both complete bodies and body parts.

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- I. Forensic specialists must be familiar with the pertinent provisions of international humanitarian law and international human rights law, and should advocate their incorporation into the basic training of forensic specialists.
- J. Forensic specialists have a duty to abide by the ethics of their profession and be aware of the threats they might face in contexts involving missing persons.

### 60. Forensic teams, contracts, employers

- 60.1 The authorities have ultimate responsibility for the management, exhumation and identification of human remains. However, in contexts involving missing persons, others may have to undertake this role and bring forensic specialists to the area.
- 60.2 When forensic specialists move from their everyday domestic context to work in an international context, often for the first time and in a foreign jurisdiction, a specific person with relevant experience needs to be placed in charge of the examination of the remains. **This is not the same as being in overall charge of the team or operation.** This person needs to have the qualifications, skills and experience required to determine:
  - A. the deceased's identity;
  - B. the pathologies (including injuries) present in the deceased;
  - C. the cause of death.
- 60.3 This person needs to be a medical practitioner with recognized qualifications, skills and experience in forensic pathology. His or her conclusions must be accepted as credible by local officials, the families and (national and international) tribunals. Therefore, the opinion, work and contract of a forensic pathologist may be different to that of a forensic anthropologist or a forensic archaeologist.
- 60.4 Before starting work, forensic specialists should make sure that the following questions are addressed when they are briefed or advised by the employer (whether a government service or organization) and the relevant authorities.
  - A. What is the legal framework within which they will be working? The answers to other questions may determine this:
    - a. Which domestic law applies?
    - b. What part of the proposed work may be legal and what part may be illegal if performed by a foreign forensic specialist? For example, it may be lawful to watch a *post mortem* examination being performed by a local pathologist but unlawful under national law to conduct an exhumation.
    - c. Do the authorities recognize the forensic specialists' qualifications?
    - d. Is the contract with the employer recognized by the authorities?
    - e. What legal support is available if the forensic specialists are arrested (whether justifiably or unjustifiably) for doing their work?
    - f. Is the work in fact being done in a context that is unlawful or might be deemed to be unlawful in domestic law?
  - B. What is the mandate and legal standing of the employer (if not the authorities) in the context?
  - C. Can it be assumed that such work performed under a UN mandate automatically pre-empts domestic law?
  - D. Has the forensic work been incorporated into any kind of peace process to which the parties to the conflict are committed?
- 60.5 Forensic specialists must understand the different contexts and priorities the employer may attribute to their work.
  - A. They must understand the employer's mission and are responsible for ensuring that the employer is recognized as competent and credible and is willing to work with others.
  - B. Forensic specialists should also be aware of the wider agenda the employer may have:
    - a. the promotion of human rights and the investigation of violations (organizations involved in human rights advocacy, such as Physicians for Human Rights and Human Rights Watch);
    - b. the promotion of international humanitarian law while preserving neutrality and impartiality (for example, the ICRC);
    - c. the question of criminal accountability (the case of the International Criminal Court).
  - C. There may be points of compatibility and incompatibility between these organizations and their legal mandates.

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- 60.6 Much of the above relating to the role and responsibilities of forensic specialists should be recognized by the employer and reflected in the contract.
- A. A contract by which a forensic specialist is engaged to work in a context specifically involving missing persons should include the following:
- a. an affirmation of professional qualifications;
  - b. a commitment to work by standard guidelines relating to exhumation, autopsies **and** identification;
  - c. a commitment to, if necessary, exhume the remains, identify the body and establish the cause of death on an impartial and objective basis;
  - d. a commitment to give equal consideration to the family in all matters pertaining to human remains and to ensure that the authorities or the employer have done everything possible to make sure that the families are informed and supported;
  - e. a commitment to treat any remains with due respect;
  - f. a commitment to brief any forensic specialist replacing him/her and to affirm the obligation that that person must continue to work by the same guidelines;
  - g. an indication of how this work will fit in with the mandate and legal status of the employer;
  - h. a clear understanding of who bears ultimate responsibility for exhuming remains, making the identification and issuing a death certificate if the authorities are unable or unwilling to do this;
  - i. an assurance that the employer has obtained or will obtain security guarantees from the authorities;
  - j. a reference to the handling and preservation of all evidence by standard means;
  - k. an understanding that exhumation will include both identification and establishing the cause of death;
  - l. a clear indication of whether or not the forensic specialist is expected to present findings in court;
  - m. a commitment that health and safety procedures will be followed;
  - n. a commitment that adequate insurance coverage - such as malpractice insurance - has been provided for all eventualities, as the coverage pertaining to the specialist's domestic work may not apply;
  - o. in keeping with standard forensic practice, an agreement that the practitioner has the right to copy documents and photos for which he/she was responsible, subject to an undertaking of confidentiality, and acknowledgement that copyright lies with the employer.
- B. Consideration of these points will help forensic specialists work within an ethical framework while promoting the application of international humanitarian law and international human rights law and at the same time minimizing the families' distress. Failure to take account of these points could undermine the forensic specialist's credibility.
- 60.7 In short:
- A. The terms of reference or contract must ensure that the employer's mandate is compatible with the ethical practice of forensic specialists.
  - B. All forensic work must be carried out within the framework of a clear mandate. This includes consideration of the lawfulness of the work and other short and long-term considerations.
  - C. The mandate must be underpinned by the principles of neutrality and impartiality.
  - D. The employer must recognize the role and responsibilities outlined in 59 above and the need to adhere to best practice guidelines as referred to in 60.6 above and 61 below.
  - E. The employer must provide adequate background information about the context, including political, cultural and security information.
  - F. The security of the investigating team and contributors has priority over the provision of evidence and identification.
- 61. The need for best practice guidelines**
- 61.1 Best practice guidelines that take account of existing guidelines (such as those set forth in the 1989 Minnesota Protocol on the legal investigation of extra-legal, arbitrary and summary executions) and minimum acceptable standards would make it easier to act within those ethical boundaries and ensure they are observed in all circumstances.
- 61.2 Best practice guidelines on forensic work in contexts involving missing persons must be disseminated and promoted within the forensic community.
- 61.3 Best practice guidelines must, wherever possible, accommodate local skills and expertise.
- 61.4 Best practice guidelines must include the training of non-specialists and partially qualified personnel; such training should be planned in the early stages of the project.

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61.5 Consideration should be given to a standard format whereby a forensic specialist working in the field can provide an attestation of death in circumstances where the identity is known but there is little chance that the authorities will issue a formal death certificate.

### 62. An international body of forensic specialists

62.1 There is a need for an international body whose mission statement relates to forensic specialists who work in contexts involving missing persons.

62.2 Such a body or network should be responsible for:

- A. drawing together the disciplines that make up the forensic sciences;
- B. disseminating guidelines and standards of practice;
- C. ethical issues;
- D. professional credentials;
- E. providing advice to forensic specialists and employers, whether authorities or organizations;
- F. accrediting laboratories undertaking DNA analysis in contexts involving missing persons;
- G. auditing and evaluating field activities;
- H. language issues (translation and professional lexicon);
- I. lobbying governments to make forensic expertise and material resources available for international work;
- J. lobbying for national or regional "clearing houses" for dealing with missing persons.

62.3 Consideration should be given to where such a body might best be located.

### 63. Autopsy protocols and recording of *post mortem* data

63.1 The existing references are the Minnesota Protocol and the Interpol DVI autopsy protocol.

63.2 The objective is to subject human remains to one examination only. The same examination should serve to establish the cause of death **and** to record the information needed to make a positive identification. Examinations should not have to be repeated because previous examinations were incomplete.

63.3 Workload forecasts for any action or investigation must be both realistic and professional.

63.4 With regard to the use of the Minnesota Protocol:

- A. the advantages are that:
  - a. it is widely recognized and comprehensive;
  - b. it represents standards of practice;
- B. the disadvantages are that:
  - a. it describes a standard autopsy and therefore contains much information that is redundant for a qualified forensic pathologist;
  - b. it is difficult to apply to all situations;
  - c. it does not provide the means to document findings;
  - d. it is difficult to read as a checklist for an inexperienced examiner;
  - e. it does not discuss the examination of skeletal or partial remains;
  - f. it is not compatible with an electronic format.
- C. The term "prosector" should indicate a person competent to perform an autopsy but who is under the ultimate responsibility of a forensic pathologist (see 60.2 and 60.3)
- D. The Minnesota Protocol should be reviewed with respect to extracting those elements which represent a minimum standard of practice and are also agreed upon.

63.5 With regard to use of the Interpol DVI autopsy protocol in contexts involving missing persons:

- A. the advantages are that:
  - a. it is widely recognized and adapted for international use, and it has been translated into a number of official languages;
  - b. it is easily translatable into an electronic format;
  - c. it serves as a checklist;
  - d. it provides an easy means to document autopsy findings;

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- B. the disadvantages are that:
  - a. the section relating to missing body parts is not useful in relation to the examination of partial remains;
  - b. it does not permit the systematic documentation of findings pertaining to injuries and cause of death.
- 63.6 One standardized *post mortem* form should be drawn up in the light of the advantages and disadvantages of both the Minnesota Protocol and the Interpol DVI autopsy form. A working group should be established for that purpose.
- 63.7 This standardized form:
  - A. must be designed to serve as both checklist and data collection form;
  - B. must be designed to be compatible with the development of an appropriate software;
  - C. must be designed to be compatible with a corresponding standardized *ante mortem* form (see 71.2 and 71.3);
  - D. must be written in an international language and be able to accommodate a local language;
  - E. must use recognized terms in a consistent manner permitting translation;
  - F. must permit the inclusion of an autopsy report and a conclusion;
  - G. must include a reference to the chain of custody for the samples taken;
  - H. must be able to accommodate future revisions;
  - I. must be accompanied by a user manual;
  - J. must be accompanied by specific training in its use;
  - K. must, when completed, be widely available and accessible via the Internet.
- 63.8 The principle disadvantages of such a standardized form are:
  - A. the further work required to prepare it;
  - B. the fact that its use will slow down examinations and the recording of findings, a point to be borne in mind when planning and funding an investigation.
- 63.9 Both the Minnesota Protocol and the DVI autopsy protocol should, **as an interim measure**, be made available to forensic specialists currently working on issues involving missing persons.
- 64. Conducting forensic work when only external examination is possible**
- 64.1 In contexts involving missing persons, forensic pathologists may find themselves unable to perform a full autopsy. It may be necessary under difficult conditions, with little time and without access to mortuary facilities, to examine a number of bodies with a view to both identifying them and establishing the cause of death. This would pose a problem for any forensic specialist, but performing only an external examination would be compatible with professional conduct given the constraints.
  - A. Such situations are recognized in the introduction to the Model Protocol for Disinterment and Analysis of Skeletal Remains (which along with the Minnesota Protocol is part of the UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions): "Variation from the protocol may be inevitable or even preferable in some cases. It is suggested, however, that any major deviations, with the supporting reasons, should be noted".
  - B. The objective of such an examination is to collect and preserve as much information as possible with a view to maximizing the chances of later identification.
- 64.2 A forensic pathologist is best qualified to perform such an abbreviated examination of recently dead bodies, while forensic anthropologists might be best equipped to so examine skeletal remains.
- 64.3 **Annex R** contains a *checklist for forensic work when only external examination is possible*.
- 65. Ensuring that human remains are identified by appropriate means**
- 65.1 **Definition:** identification is the "individualization by the attribution of birth name or other appropriate name to human remains".
- 65.2 Identification is one aspect of the investigation into a death, which seeks answers to other questions as well (such as the cause of death).

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### 66. Responsibility and accountability for the identification of human remains

- 66.1 The authorities have a responsibility to ensure that human remains are identified by qualified and competent people.
- 66.2 Identification is the responsibility of a competent, qualified and experienced person who should make the identification by integrating all the relevant information available. This person should be medically qualified or a legal officer so defined in law.
- 66.3 Issuing the medical certificate of death is the responsibility of the medically qualified person or legal officer who was responsible for making the identification.
- 66.4 Constraints on resources, both human and financial, or the circumstances of a particular mission may justify a lapse in the standards. This does not absolve the person in charge or the employer of responsibility for the means used to identify human remains.
- 66.5 Usually human remains are examined and identified by means of a team effort.
- A. However, the process should be under the overall responsibility of a professional (see also 60.2 and 60.3):
- a. who has the qualifications, skills and experience needed to make conclusions about the deceased's identity, the pathology (including injuries) present in the deceased and the cause and manner of death;
  - b. who practices his/her profession within an organized ethical framework;
  - c. who can be held accountable for errors or unethical practices.
- B. It is therefore preferable that this person be a forensic pathologist, as this reflects legal arrangements in most parts of the world.
- 66.6 It is the responsibility of the head of the forensic team to decide which method or methods of identification are most appropriate in a given context.
- 66.7 It is the responsibility of the head of the forensic team to ensure that relatives, the community and the authorities are informed about the limitations of the methods chosen to identify human remains so as not to raise unrealistic or false expectations.
- 66.8 When there is no competent authority, regional or international organizations can be instrumental in:
- A. having the families or close acquaintances identify human remains;
- B. preserving as much information as possible about:
- a. missing persons;
  - b. human remains which have not been identified officially;
  - c. unidentified human remains.

### 67. Means of identifying human remains

- 67.1 An **identification** can be made in **three** ways.
- A. **Visual or normal or customary** (relatives or acquaintances viewing the remains, identity documents or discs)
- a. Visual identification may be the only pragmatic option; however, it is known to carry a significant risk of misidentification, and should only be resorted to when the bodies are fresh and there is a good idea who the victims are. Otherwise, more objective methods should be used.
  - b. Where visual identification is used, consideration should be given to collecting a sample for later DNA analysis should the need arise; however, even this apparently simple measure may be difficult to perform in the field.
- B. **The weight of circumstantial evidence** (e.g. matching of *ante mortem* data with information collected during the examination): when the identification is made by matching *ante mortem* data with *post mortem* data, some "hard" features such as previous medical conditions and frontal sinus radiology equate with "scientific" means. Without such "hard" identifiers, there is a significant risk of false identification (which in fact represents declaring a presumptive identification to be an identification).
- C. **Scientific / objective methods** (dental records, fingerprints or DNA).
- 67.2 The above three steps do not necessarily follow on from one another, but normal practice is that, as identification becomes more difficult, the emphasis moves from 67.1A to 67.1B to 67.1C.



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- 67.3 The state of the remains should be taken into account in order to adopt the most efficient means of identification in situations:
- A. where the bodies are whole, few or numerous, commingled or partial;
  - B. where there are few or numerous non-decomposed bodies;
  - C. where there are few or numerous skeletal remains.
- 68. Combinations of means of identifying human remains**
- 68.1 Means of identifying human remains can be combined.
- 68.2 **Identification by visual / normal / customary means only.** This might be appropriate in a difficult security situation with recently killed whole bodies, where the families are present and no other possibility for formal identification exists.
- 68.3 **Identification by visual / normal / customary means plus matching of *ante mortem* data with *post mortem* data.** This is appropriate in situations similar to those described in 68.2 above but where there is more time, doubt about identity, or the family is not present immediately and scientific / objective means cannot be used. Any positive identification should, if possible, be agreed on by two qualified people.
- 68.4 **Identification by visual / normal / customary means plus a scientific / objective means.** This is appropriate in situations similar to 68.2 above but in which scientific / objective means can be used, there is more time or doubt about identity or there is a dispute with legal implications. This may be appropriate in cases of re-exhumation.
- 68.5 **Identification by matching *ante mortem* data with *post mortem* data only.** This means should only lead to positive identification if there are matching "hard" identification features. The identification should be concluded by agreement between two qualified people. Without "hard" identification features, matching *ante mortem* data with *post mortem* data may be used to supplement both 68.2 above and 68.7 below.
- 68.6 **Identification by matching *ante mortem* data with *post mortem* data plus scientific / objective means.** Identification by these means is the most certain route to true identification.
- 68.7 **Identification by scientific / objective means only.** This refers to matching of fingerprints, matching of *ante mortem* dental records with *post mortem* dental examination or DNA analysis. Each has its advantages and disadvantages in contexts involving missing persons:
- A. all require additional expertise and possibly laboratory resources;
  - B. fingerprints can lead to the rapid identification of fresh bodies if *ante mortem* prints are available; the principal disadvantages of using fingerprints is that it requires soft tissue on the hands of the remains and the existence of *ante mortem* records, which are rarely available in the contexts considered here;
  - C. matching of *ante mortem* dental records with *post mortem* dental examination is most appropriate when the remains are burnt, skeletal or in an advanced state of decomposition; as with fingerprints, *ante mortem* dental records are a prerequisite, and they are rarely available in the contexts considered here;
  - D. DNA is the only means, apart from those alluded to in 68.5 above, of making an objective / scientific identification if there are skeletal remains but no *ante mortem* dental records; DNA analysis provides the only reliable means of identifying and assembling partial remains.
- 68.8 Whenever possible, a visual (normal or customary) identification should be supplemented with identification by one of the other two methods.
- 68.9 Human remains should be identified by DNA typing when other investigative techniques of identification are inadequate and the conditions defined under 69 have been fulfilled.
- 68.10 Governments, regional and international inter-governmental and non-governmental organizations and the ICRC must take care not to introduce double standards in the methods used to identify human remains.
- 68.11 **Whatever the approach to identification:**
- A. **it must be adapted to the context**, a process that may have security, political, financial, cultural, legal technical and/or scientific ramifications;
  - B. it must be agreed to by all those involved before the identification process starts, and must
    - a. include decisions and protocols regarding the collection of *ante mortem* data and, possibly, of samples for DNA analysis - see **Annex U**, *checklist for the collection of ante mortem data and of samples for DNA analysis*;
    - b. include autopsy and identification protocols;
    - c. be implemented under the responsibility of the head of the forensic team.

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### 69. The use of DNA analysis to identify human remains in the contexts considered here

- 69.1 **Annex Q** provides an *introduction to DNA*.
- 69.2 DNA analysis must not preclude the use of other objective means of identification.
- 69.3 DNA analysis must not be considered as the sole method available for making a positive identification, because:
- A. additional, practical methods are needed to confirm an identification;
  - B. it is not always feasible from an operational perspective;
  - C. it may put relatives under duress to provide blood samples;
  - D. laboratory errors (e.g. incorrect labelling of samples) cannot be ruled out, and the results may be cross-checked using other means of identification.
- 69.4 The decision to use DNA analysis should be based on sound scientific and practical considerations within the identification process strategy defined for a given context (see 66 above).
- A. It should not be based only on requests for DNA analysis generated by individuals, families, communities, organizations or governments.
  - B. Laws must not be enacted requiring mandatory DNA analysis for the purpose of identification.
  - C. Requests by governments, organizations or individuals for the re-exhumation of remains previously identified using traditional means for the purpose of DNA analysis should be decided on a case-by-case basis.
- 69.5 In the pre-investigation phase, the social, religious and cultural characteristics of the community concerned must be taken into consideration. The families and the community will accept the outcome more readily if they have confidence in the investigation.
- 69.6 When DNA analysis is deemed necessary for identification:
- A. it must be performed in laboratories that:
    - a. work to accredited standards of quality;
    - b. handle remains, samples and data in accordance with the rules governing the protection of personal data and human remains, which include the protection of *ante mortem data* and DNA samples and results (see 26, 36 and 40; see also **Annex C: Legal protection of personal data and human remains: commonly accepted principles**);
  - B. the laboratory performing the analysis must not operate on the basis of maximum profit; commercial considerations should be minimized and the accounts must be externally audited;
  - C. any contract with a laboratory must include a reference to the rules governing the protection of personal data and human remains (see 26, 36 and 40; see also **Annex C: Legal protection of personal data and human remains: commonly accepted principles**):
    - a. incidental information such as non-paternity - in individual cases and as a community statistic - should be subject to the rules governing the protection of genetic information;
    - b. with the input of lawyers, population geneticists, ethicists and laboratory researchers, consideration should be given to the use of **anonymous** data for the purposes of research, for example, to establish allele frequencies;
  - D. it is the responsibility of the head of the forensic team to remind the laboratory of these rules;
  - E. even if the laboratory is of the highest standard, it may not have the technical or personnel capacity to undertake an increased workload at short notice.
- 69.7 The conditions under which DNA samples are collected should be defined: see **71 and 75**; see also **Annex U: Checklist for the collection of ante mortem data and of samples for DNA analysis**.
- 69.8 Forensic specialists have a duty to ensure that the donors of reference samples are informed about the rules governing the protection of personal and genetic information (see 26, 36 and 40; see also **Annex C: Legal protection of personal data and human remains: commonly accepted principles**).
- ### 70. Preconditions for including DNA analysis in a programme to identify human remains
- 70.1 An expert evaluation must be made when the identification process strategy for a given context is drawn up. This will, to some extent, determine the resources required.
- 70.2 The DNA techniques must be feasible and practicable in the given context.
- 70.3 The DNA techniques must be reliable and scientifically valid.

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- 70.4 This evaluation is separate from the validation of the laboratory. Part of validating any technique in a given laboratory involves duplicating each test.
- 70.5 The information technology used to analyse and match DNA samples must be reliable and valid.
- 70.6 The financial costs must be considered; these vary depending on the number of analyses required and the cost of each analysis in whichever laboratory undertakes to do work.
- 70.7 In relation to resources and logistics:
- A. there is an important distinction between samples taken for DNA analysis to be performed within the country and those taken for analysis abroad;
  - B. the logistical implications include collection, storage, transport and a chain of custody agreed to by all those concerned; the number of those involved, including the number of laboratories, should be kept to a minimum;
  - C. if there is no overall coordinating body in charge of collecting and labelling samples, then how those samples are to be transported and analysed should be stipulated in advance according to competencies and in a written contract.
- 70.8 The additional cost and complexity must be outweighed by the anticipated additional social benefit.
- 70.9 Strategies must be established for dealing with errors of identification and with partial, commingled or unidentified human remains.
- 70.10 All those involved must agree on communication, information and counselling strategies for the communities and individuals concerned. The information must be realistic but should not discourage participation. With regard to DNA it should mention:
- A. that DNA is not always required for identification;
  - B. that it is not always possible to extract DNA from remains;
  - C. that positive results will not always be achieved.
- 70.11 Appropriate mechanisms providing, for example, for confidentiality, follow-up and services, must be established for informing the families about the process.
- 70.12 There should be an "exit strategy".
- 70.13 Prior consideration must be given to the positive and negative unintended impact on pre-existing legal and forensic services.

### 71. *Ante mortem* data and samples for DNA analysis

- 71.1 The purpose of an *ante mortem* form such as that used by Interpol DVI is to list "all relevant information that may be obtained from next-of-kin and other relevant sources, of the possible victim or missing person, which may assist in an identification, in order to compare that information with data obtained from human remains".
- 71.2 A comparison of four existing forms brought to light the need for a standard *ante mortem* data collection form, to be developed by a future working group.
- 71.3 This form must:
- A. be developed in an appropriate electronic format with professional data handlers;
  - B. contain fields corresponding to "hard" identifying features such as:
    - a. tattoos,
    - b. birthmarks,
    - c. unusual hair distribution,
    - d. scars (surgical or traumatic),
    - e. nicotine staining of fingers,
    - f. state of fingernails,
    - g. obvious deformities or malformations,
    - h. those noted in medical or dental records;
  - C. be compatible in terms of language, terminology and software with the proposed standardized *post mortem* form (see 63.6 and 63.7);
  - D. contain an adequate number of blank fields and so be flexible enough for use in a wide variety of contexts;
  - E. reflect the possibility that steps were deliberately taken to confuse the identification process (for example, ID cards redistributed in a mass grave);

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- F. accommodate the taking and recording of samples for DNA testing, which implies that the missing person's genealogy must also be recorded in certain circumstances;
  - G. accommodate the existence of alternative sources for the missing person's DNA, such as hairbrushes or razors;
  - H. be field tested before being finalized;
  - I. be developed with a user guide (those using a standard *ante mortem* form will have to be carefully selected and trained).
- 71.4 The information collected using the proposed standard form for *ante mortem* data can be used not only for identification but also as evidence in a criminal investigation. This is acceptable, given that the *post mortem* examination can be characterized by the same "duality" of purpose and that the autopsy can lead to "tension" between identification and the judicial process.
- 71.5 **Annex S** contains a *checklist of items to include when collecting ante mortem data*, for consideration by the future working group and for use pending the establishment of a standard form.
- 71.6 Samples for DNA analysis: **Annex T** provides guidance on the *technical aspects of collecting and storing DNA samples*.

## 72. Exhumation of human remains

- 72.1 **Annex K**, *checklist for the management of sites containing human remains, including graves*, contains information that exhumation teams will find useful in discovering such sites.
- 72.2 Two forensic specialists, both with considerable experience in exhuming mass graves, have undertaken to draw up guidelines that include all the steps to follow in an exhumation process. The main phases are listed below and should be followed in strict order:
- A. locate the gravesite;
  - B. establish a security perimeter;
  - C. if permitted, photograph and document surface features / evidence;
  - D. establish the boundaries of the grave;
  - E. remove the soil covering the remains;
  - F. expose the remains;
  - G. map and photograph the remains;
  - H. note the position of the remains, label distinctly and keep separate any personal effects or other objects not attached to the remains (e.g. keys, bullets);
  - I. label all remains distinctly and individually, whether parts or whole bodies;
  - J. remove the remains (while keeping them as an entire body if possible);
  - K. store the remains in a safe place; or
  - L. if appropriate, allow the family immediate visual access for the purposes of identification.

## 73. Working group of experienced forensic experts

- 73.1 Further to the process it launched on *The Missing*, the ICRC will convene a working group of experienced experts to:
- A. develop standard *post mortem* and *ante mortem* data collection systems that are compatible (see 63.6, 63.7, 71.2 and 71.3);
  - B. examine the standards of forensic practice applicable in contexts involving missing persons (see 63.4);
  - C. examine in greater depth the means and combinations of means of making a positive identification in a variety of contexts (see 68);
  - D. establish guidelines for the exhumation of graves (see 72).

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### 74. Community and family involvement in an exhumation and/or identification process

#### 74.1 General principles

- A. Any investigation or exhumation must be carried out in constant interaction with the community and with the families or their representatives.
- B. Undignified or unskilful handling of remains may further traumatize the family.
- C. The families must be given a realistic expectation of the outcome, given the state of the remains, number of bodies, etc.
- D. The families must be provided with information and psychological support.
- E. The subsequent process of identification must be explained to the families while the process is ongoing.
- F. The families must be told that identification will rely on simple or traditional identification techniques first and that more sophisticated technology can only be used if it is needed and available in the context.
- G. The families should be approached as soon as possible after an exhumation is planned regarding the provision of *ante mortem* data.
- H. The notion of "family" may vary with the context. There need to be clear guidelines on how to handle divided families.

#### 74.2 General considerations

- A. The request for an exhumation programme may come from the community or the families of the missing persons.
- B. The relationship between the forensic specialists and the communities and families is always complex. A forensic specialist may feel uncomfortable within this relationship, which is influenced by:
  - a. how information is transmitted to the communities and families;
  - b. the purpose of the investigation, i.e. whether it focuses on the identification of remains or on a criminal investigation;
  - c. the extent and timescale of the investigation;
  - d. who is conducting the investigation - the police, the military, a government body, an NGO, an international forensic team, a UN body, etc. (forensic specialists who held the same position in a previous, perpetrating government will generate considerable suspicion);
  - e. whether the perpetrators are still at large in the community (this will affect whether relatives locate graves, testify or provide *ante mortem* data);
  - f. whether the families believe any information resulting from the investigation will be used for their benefit or in the genuine interests of justice;
  - g. whether the forensic specialists and other team members attend the funerals of the people whose remains they have identified.
- C. The social and psychological impact on communities and families should be documented for future reference.

#### 74.3 How are communities and families involved in the exhumation and identification of remains?

- A. Communities and families are deeply traumatized when members are killed or massacred. Uncertainty about the fate of missing persons and the process of identifying remains may simply add to the trauma.
- B. The extent to which the communities or families are involved in the exhumation should be decided on a case-by-case basis taking into account:
  - a. the results of any consultation with the communities and families;
  - b. whether the family wishes to be present or represented by a qualified person;
  - c. the overall possible benefit to the families;
  - d. the possibility that the investigation will be compromised, including by political interference;
  - e. the possibility that the families may suffer further trauma, especially if the investigation is unnecessarily prolonged, the information collected in an insensitive way or the remains perceived to be handled unprofessionally, in an undignified manner or disrespectfully;
  - f. security considerations.
- C. In addition, the community or family may:
  - a. know where remains or graves are or are likely to be situated (including in territory controlled by the former enemy);
  - b. facilitate identification of remains after recovery;
  - c. provide security at the site of the investigation;
  - d. wish to veto the exhumation (this requires careful consideration).

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- 74.4 Informing the communities and families about the exhumation
- A. It is essential in all contexts to have a communication strategy, the objective of which is to inform and regularly update communities and families about an exhumation. Realistic appraisals must be given of the outcome.
  - B. The following should be borne in mind:
    - a. family observation of the exhumation process may lead to easier acceptance of the results;
    - b. religious or community leaders (who are not connected to the authorities) should be contacted;
    - c. it may be appropriate to discuss some form of memorial at an early stage;
    - d. any psychiatrists, psychologists, social workers or traditional healers who might be working with the families should be contacted, informed and, if possible, involved.
- 75. Family involvement in the collection of *ante mortem* data and of samples for DNA analysis**
- 75.1 The collection of *ante mortem* data and of samples for DNA analysis (DNA samples) may not involve forensic specialists, but the data and samples collected will be of no value unless they can be compared to the findings of forensic specialists.
- 75.2 In principle, therefore, before any *ante mortem* data or samples for DNA analysis are collected, a framework for the exhumation and identification process must be defined and agreed to by all those involved (see 65, 66.6 and 68.11), in particular as concerns:
- A. the legal rules governing the protection of personal data and human remains, which include the protection of *ante mortem* data and DNA samples and results (see 26, 36 and 40; see also **Annex C** *Legal protection of personal data and human remains: commonly accepted principles*);
  - B. ownership and management of the *ante mortem* data and DNA samples and results.
- 75.3 In principle, therefore, *ante mortem* data and DNA samples should not be collected outside the framework of a planned process to collect, exhume and identify remains:
- A. the fact that *ante mortem* data and possibly DNA samples are being collected from a family suggests that the missing relative is dead and induces great hope that the remains will be found;
  - B. if no such data is being collected but there is a strong suspicion of death, the family's tracing request must be exhaustively completed as the recollection of important details fades with time (see 76).
- 75.4 Once the prerequisites have been met (see 75.2), the collection process must be well prepared and coordinated with all those concerned.
- 75.5 Agreement must be reached on a standard form for the collection of *ante mortem* data (see 71 and **Annex S**, *checklist of items to include when collecting ante mortem data*).
- 75.6 The collection, storage, transport and chain of custody of any DNA samples should be agreed to by all those concerned; the number of those involved, including the number of laboratories, should be kept to a minimum (see 69 and 70).
- 75.7 When the prerequisites have been met (see 75.2) and it is highly likely that the missing person or people are dead, it may be appropriate to collect *ante mortem* data and DNA samples when a tracing request is first filed.
- 75.8 Staff in charge of the collection process must be identified, selected, trained and supported so as to avoid secondary trauma (see 55).
- 75.9 Psychological support for the families or individuals must be systematically planned and provided as an integral part of the collection process in order to help avoid retraumatization (see 48).
- 75.10 In principle, the aim should be to carry out only one interview with the family (even if conducted in several phases): multiple interviews and subsequent requests for further information (or DNA samples) might further traumatize the family.
- 75.11 Whenever possible, the process of collecting *ante mortem* data should be organized for groups of people who became unaccounted for in the same circumstances or during a specific event and/or whose remains might be expected to be found in the same location. This should facilitate the planning of exhumations and speed up the process of identification.
- 75.12 A communication strategy that is agreed to by all those concerned must be implemented. The communities and families must be realistically informed about the processes by which *ante mortem* data and DNA samples are collected and remains exhumed and identified.
- 75.13 **Annex U** contains a more detailed *checklist for the collection of ante mortem data and of samples for DNA analysis*.

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### X. Operational best practices regarding the compilation and processing of tracing files

#### 76. The compilation of tracing files

- 76.1 It is essential to compile comprehensive files on persons being sought by their families, and all those concerned should cooperate in order to ascertain the fate of those people and provide support to their families (see 38.3 and 38.4).
- 76.2 All those involved must emphasize and acknowledge the importance of distinguishing between humanitarian and political issues when processing files on missing persons.
- 76.3 Files on missing persons may:
- A. serve several purposes, for example:
    - a. to ascertain the person's fate and inform the family;
    - b. to find and identify the person's remains in order to return them to the family;
    - c. to settle administrative and social questions for the person's family;
    - d. to prosecute the perpetrators of crimes relating to the person's disappearance;
    - e. to reunite families, in particular children with their parents;
    - f. to establish the truth for posterity and in order to promote reconciliation;
    - g. to exert public pressure in individual cases or concerning patterns of abuse;
  - B. contain several sub-files on the same person (for example, on financial, medical or *ante mortem* information, witness accounts, judicial proceedings).
- 76.4 This section deals mainly with files constituted for tracing purposes.
- 76.5 A conflict of interests may arise between the family's need to know the fate of a relative and the needs of the prosecution. The first objective should be to provide information to the family. Other objectives should be worked towards simultaneously or during a second stage.
- 76.6 Depending on their objectives, the authorities and organizations constituting files will do so at different points in time, and the files they compile may not cover all the same subjects.
- 76.7 The main actors are:
- A. State authorities and armed groups, including Information Bureaux (see 10.55, 24.4, 34.4 and 82);
  - B. the ICRC;
  - C. the UN and its agencies;
  - D. national and international non-governmental organizations, including humanitarian and human rights organizations.
- 76.8 Those compiling files must share and make known their methods of doing so, their objective(s) and their processing procedures. The information they make available must include:
- A. the modes of action they use (public versus confidential);
  - B. the rules governing the protection of personal data they apply (see 40 and **Annex C: Legal protection of personal data and human remains: commonly accepted principles**);
  - C. the exact use to which the information will be put, in particular regarding its potential publication or transmission to other organisms; sources (enquirers and witnesses) must be clearly informed accordingly;
  - D. the ICRC's notification to its sources (families and witnesses) that it will not transmit information to tribunals.
- 76.9 Whenever a file is first opened:
- A. whatever the objective, it may be based on input from a number of initial sources, such as family, friends, other organizations, press / media or unaccompanied minors;
  - B. in principle all possible steps should have been taken - albeit unsuccessful - to restore family contact (see 42.1 and **Annex D: checklist on the means and methods of restoring and maintaining family contact**);
  - C. steps should be taken as soon as possible systematically to collect all available information about the person concerned.

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- 76.10 All files:
- A. must be drawn up on an impartial basis, and local players encouraged to act impartially;
  - B. must distinguish between facts and presumptions;
  - C. should give preference to information from reliable sources;
  - D. must be based on sound, local knowledge and reflect the degree of the source's reliability, meaning that international organizations should:
    - a. have a good knowledge of the context;
    - b. rely on nationals with experience of this kind of work whenever possible.
- 76.11 In terms of contents, tracing files must be standardized so that information can be shared and centralized.
- A. The standard contents for initial files on missing persons, which must first be adapted to the context (a process that includes the addition or removal of items of information) is outlined in:
    - a. **Annex V: Standard contents of a tracing file: checklist to be adapted to the context**, and
    - b. **Annex W: Standard tracing request form: checklist to be adapted to the context**.
  - B. In addition, *ante mortem* data should be collected at the same time as information for the initial file when:
    - a. there is a planned process to collect, exhume and identify human remains within an adequate framework (see 75); and
    - b. there is a strong presumption of death.
  - C. If there is a strong suspicion of death but no *ante mortem* data are being collected, the family's tracing request must be exhaustively completed as the recollection of important details fades with time.
- 76.12 Information that may help ascertain the fate of missing persons and so provide a humanitarian service should be centralized by a neutral and impartial body acting in compliance with the rules governing the protection of personal data. It is particularly important to centralize such information when the victims of a situation are spread over a large region / several countries. Whenever possible, such information should be centralized by the ICRC (see 39 and **Annex X: The ICRC's position on the centralization and sharing of data**).
- ### 77. Processing of tracing files
- 77.1 The strategy adopted for processing files depends on the situation.
- 77.2 The relevant authorities always bear primary responsibility. The role of the community of States, of international, regional or local governmental or non-governmental organizations and of the ICRC is to provide support and act as facilitators.
- 77.3 The strategy of any humanitarian or human rights organization in a given situation will nevertheless differ depending on the degree to which the State authorities and armed groups are willing and able to implement measures to ascertain the fate of missing persons (see 38.7).
- 77.4 During armed conflict and internal violence, the ICRC can play a major role as a neutral, impartial and independent player.
- 77.5 In post-conflict / post-violence situations, the processing of files should be enhanced within a framework that takes account in particular of the means of obtaining information on the fate of missing persons, including from perpetrators (see section XI). This framework should be established in the light of:
- A. the need to set up a centralized body to compile, update and validate files;
  - B. the role of the judiciary and the need for reconciliation;
  - C. the need for a mediation process (which might include measures of amnesty or guarantees of anonymity) in order to obtain access to information.
- 77.6 Mechanisms with exclusively humanitarian aims should be established, whenever necessary, with the support of a neutral intermediary such as the ICRC:
- A. to collect, centralize and disseminate information concerning cases of missing persons;
  - B. to ensure that those involved work in accordance with agreed procedures and do not duplicate each others' efforts.
- 77.7 Technically, the processing of files includes in particular:
- A. the mechanical cross-checking of data within database(s) and files;
  - B. the reconstitution of events having led to one or more person(s) becoming unaccounted for;



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- C. field tracing or active searching for the persons being sought, including by means of interviews, the media, etc.;
  - D. the consultation of registers (hospitals, orphanages, collection points, etc.);
  - E. the updating and cross-checking of data;
  - F. the constitution of additional sub-files;
  - G. the submission of requests to the State authorities and armed groups;
  - H. keeping the families, and at times the State authorities and armed groups, informed about the process.
- 77.8 The families attach great importance to the publication of the names and pictures of missing persons, which also constitutes a means of exerting pressure at the political level. The ICRC and non-governmental organizations should use this method, but with care:
- A. the State authorities and armed groups should not be in a position to manipulate the publication in their interest;
  - B. the publication should not place either the missing persons or their families in danger.
- 77.9 The families of missing persons must be clearly informed by all those involved and in all circumstances about both:
- A. the measures taken to ascertain the fate of the missing persons and the results obtained; and
  - B. their rights.

### 78. The status of tracing files

- 78.1 Files on missing persons need not be left pending indefinitely.
- 78.2 Generally speaking, however, the needs of the families must be taken into account.
- 78.3 It is inappropriate to apply the word "closure" to a tracing file as long as the person's fate has not been ascertained.
- 78.4 Tracing files:
- A. can be either:
    - a. active: when steps are being actively taken;
    - b. passive: when the current situation and the information available do not allow for further action;
  - B. should be reactivated when the situation changes and/or new information becomes available.
- 78.5 During and after the tracing process, other files on the same person and family may be "opened" or "closed" on, for example, the provision of (medical, financial, legal) assistance to the family, judicial proceedings, or the return of human remains.
- 78.6 Last but not least, every organization decides whether or not to pursue action on a file on the basis of its own legitimate criteria and within its specific framework and objectives. Any organization leaving a particular context, however, has a duty to hand over its files to another organization for appropriate follow-up.

### 79. Measures to ensure the efficient processing of files

- 79.1 An Information Bureau must be established and operational at the latest when an armed conflict breaks out (see 10.55, 24.4, 34.4 and 82).
- 79.2 National / local resources must be encouraged and given support to collect information that may be useful in ascertaining the fate of missing persons.
- 79.3 The data available on individuals must be preserved, which means they must be collected and managed. Measures such as the following must be taken:
- A. institutions such as hospitals and orphanages must be encouraged to keep records;
  - B. humanitarian organizations such as the ICRC, UNHCR and MSF must systematically collect information about the dead (whether identified or not) if the remains have not been returned to the family (see 56.7 and 57). This information must be transmitted to the ICRC for later use in connection with family requests regarding missing relatives.

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- 79.4 The data collected on individuals must be preserved no matter what the situation.
- A. All those involved have a duty to file and archive data. If unable to do so, they must forward the data to an organization that is.
  - B. A copy of the data should be kept outside the region of conflict / violence.
- 79.5 In order to facilitate the sharing and centralization of information, those involved should be encouraged to agree on a common data-collection format and on technical matters pertaining to data management; at the very least, they should be encouraged to coordinate their endeavours in that respect (see 39.4 and 42.7).

## XI. Operational best practices regarding mechanisms established to ascertain the fate of missing persons

### 80. Family needs

- 80.1 While the families of missing persons have many of the same needs as other victims of human rights violations, they attach distinctive priority to the need for **information** (see 38.3 and 38.4).
- 80.2 The families of missing persons also attach significance and priority to the need for **accountability**; the mechanisms established to meet that need can be judicial and/or non-judicial, the aim being to advance the cause of justice for the victims and their families, who want their loss to be taken into account.
- 80.3 Lastly, the families need and give priority to **acknowledgment**. In the cases of people who are missing as a result of criminal action or inaction by the State authorities or armed groups, the families often want acknowledgment of the missing person's dignity and intrinsic value, of the crime, of the State authorities' or armed groups' (direct or indirect) responsibility and of the steps that need to be taken to address the crime.

### 81. The influence of context on mechanisms

- 81.1 The **main obstacles** faced by mechanisms aimed at clarifying the fate of missing persons are political and technical in nature.
- 81.2 The type of situation, whether armed conflict or internal violence, should not play a decisive role in determining how to address the issue of missing persons. The determining factor is the cause of the disappearances, which can be either disorganization and acts of war or lack of good will on the part of State authorities or armed groups leading to crimes and violations. In any situation, both may be present and must then be addressed accordingly.
- 81.3 A number of **preventive and corrective measures** have been identified to overcome the obstacles identified (see below).
- 81.4 Central national mechanisms, with a mandate to obtain, manage and transmit to the families all information about the victims of the situations considered here, should be set up in each country in peacetime or at the latest when armed conflict or internal violence breaks out (see 82).
- 81.5 All mechanisms should deal not only with the State authorities but also with armed groups.
- A. Armed groups should be made aware of their obligations under international humanitarian law, including their responsibility regarding violations of the treaty-based and customary provisions of the law.
  - B. Human rights mechanisms should be extended to apply to armed groups (see also **Annex Y: About truth commissions and national human rights committees**).
  - C. Persuasion should be used to ensure that armed groups are committed to operational compliance with their obligations. The impact of stronger measures such as economic sanctions or the freezing of assets should be thoroughly assessed before they are implemented: they should be practicable and should not leave the armed groups feeling cornered, nor should they indirectly contribute to the development of illegal practices.
  - D. All armed groups should be asked to keep records on all persons who fall into their hands, including those they arrest and detain.
- 81.6 An adequate legal framework should be established with clear guidelines on what action has to be taken as soon as people become unaccounted for and on how to deal with the cases in time.
- 81.7 International mechanisms should reinforce national mechanisms, in particular during active armed conflict or internal violence, when national mechanisms may be undermined by their close links to the situation.
- 81.8 The State authorities, armed groups and civil society should be made aware that the issue of missing persons must be resolved in order to prevent others from going missing and to ensure that it does not become a legacy of the armed conflict or the situation of internal violence. Public opinion, the media and leaders, for example, should be mobilized and made aware of the problem and of the need for mechanisms, including those established for preventive purposes.
- 81.9 All those involved (international, regional and national governmental and non-governmental organizations and the ICRC) should exert pressure on those responsible - the State authorities and armed groups - for solving cases of missing persons. This pressure should include negotiations and the threat of countermeasures compatible with international law in case of non-action.

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- 81.10 The issue of missing persons and their families should systematically be put on the international agenda.
- A. In particular, peace agreements should systematically include specific mechanisms for clarifying the fate of missing persons; the community of States, international, regional and national governmental and non-governmental organizations and the ICRC should lobby actively to that end.
- B. The families constitute a pressure group that can keep the issue of missing persons on the political agenda, and their efforts in that direction should be supported.
- 81.11 As one means of exerting pressure on those responsible for people becoming unaccounted for, individual cases should in principle be immediately transmitted to both the concerned authorities and to international organisms, unless doing so would put the missing person or the family at risk.

### **82. Information Bureaux and Grave Registration Services**

- 82.1 An Information Bureau and a Grave Registration Service must be established by the State authorities / should be established by armed groups (at least when a delimited territory is under their control) and be operational at the latest when an armed conflict breaks out (see 10.55, 10.63, 24.4, 33.4D, 34.4).
- 82.2 In situations of internal violence, the necessary measures should be taken so that appropriate mechanisms are in place to ensure that all relevant information on persons affected by the violence is collected and centralized, and the families are informed. The State authorities should make sure that the peacetime mechanisms for the registration of persons deprived of their liberty and of deaths and for the required transmission of information to the families concerned continue to function during all situations, including emergencies.
- 82.3 The State authorities should establish an Information Bureau and a Grave Registration Service already in peacetime.
- 82.4 When a party cannot comply with the legal requirements for the establishment of an Information Bureau or a Grave Registration Service, it can turn for assistance to an international player, but it is not thereby relieved of its legal obligations.
- 82.5 The Information Bureau must centralize, without adverse distinction, all information on the wounded, sick, shipwrecked, dead, protected persons deprived of their liberty, children whose identity is in doubt and persons who have been reported missing. It must provide this information to the appropriate authorities, through the intermediary of the Protecting Powers and of the ICRC Central Tracing Agency.
- 82.6 The Information Bureau must act as an intermediary for the free transport of correspondence sent to and by protected persons, whenever requested via the ICRC Central Tracing Agency.
- 82.7 The Information Bureau must respond to all requests for information concerning protected persons; it will make any enquiries needed to obtain information requested but not in its possession and send the replies to the appropriate authorities or to the family through a neutral intermediary and to the ICRC Central Tracing Agency.
- 82.8 The Information Bureau must coordinate its activities with the relevant National Red Cross / Red Crescent Society, in particular regarding the collection and dispatch of correspondence and the collection of tracing requests from and transmission of replies to the families.

### **83. Focus and objectives of mechanisms for clarifying the fate of missing persons**

- 83.1 All families need information on the fate of missing relatives; this need is universal. Their needs for accountability and acknowledgement may differ, however, with the context and situation.
- 83.2 The mechanisms established should therefore not neglect individual cases. The needs for accountability and acknowledgment should be dealt with in parallel to the need for information; however they may not necessarily be met by formal judicial procedures.

### **84. Obtaining information on missing persons**

- 84.1 The State authorities and armed groups bear primary responsibility for providing information on missing persons.
- A. Criminal procedures should include sanctions for non-compliance with court orders pertaining to the disclosure of evidence. The knowing and wilful destruction of evidence should be subject to criminal sanction.
- B. Should the State authorities or armed groups not have all the information needed at their disposal, they should establish the mechanisms needed to get that information; they should be obliged to investigate.

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- C. International pressure should be used to obtain information from the State authorities and armed groups.
  - D. If the State authorities and armed groups inhibit access to information or give inaccurate information they should be held accountable.
- 84.2 In interim periods, measures must be taken to protect records and evidence from being destroyed.
- 84.3 It may be possible to use the criminal investigation methods applied to clarify peacetime disappearances to ascertain the fate of people who are unaccounted for as result of armed conflict or internal violence.
- A. The specific circumstances should nevertheless be taken into account (for example, the difference between non-international and international armed conflicts).
  - B. In certain contexts, the needs of any criminal procedure may conflict with those of the families. For example, the families may not want any criminal procedure to take place because of emotional trauma or lack of security.
  - C. Even if the decision is made not to prosecute, there should be a procedure for disclosing information.
- 84.4 Measures such as laws of amnesty, truth commissions and legislation introducing less severe punishment or granting physical protection to the perpetrators can prove useful to obtain information on individual cases and on the pattern of violations, provided they make a substantial contribution to establishing the truth.
- A. However, laws of amnesty should be granted only to individuals and under certain conditions, and any grant of amnesty must be applied in accordance with international law (see 11.23 and 31.3).
    - a. If amnesties are used to prompt the disclosure of information, they must be conditional on full disclosure and linked to a strong judicial system providing a credible threat of prosecution.
    - b. Such amnesties must not be granted to persons who have committed crimes under international law, including war crimes, genocide and crimes against humanity.
    - c. Amnesties that are conditional on full, truthful and in many cases public disclosure of the facts should not jeopardize criminal procedures.
  - B. When it comes to matters such as the hiring or rehiring of police officers and prison guards in particular, vetting procedures that are carried out in compliance with the rules of due process may be considered in respect of those involved in crimes related to missing persons.
- 84.5 However, mechanisms should endeavour to obtain information on the fate of missing persons from all available sources, in accordance with their methods of work, and not confine themselves to official information. Civil society should be active in tracing missing persons (see 77).
- 84.6 Information from third parties can be very useful if diligently verified. Any third parties providing information should benefit from:
- A. a witness protection programme;
  - B. procedures guaranteeing confidentiality that are well defined and implemented.
- 84.7 In principle, public processes to obtain information on the fate of missing persons should be promoted. People and organizations should be encouraged to testify. In practice, however, such processes should be balanced with confidential procedures established further to an analysis of the situation and the security environment:
- A. a witness protection programme might make it possible to obtain more information;
  - B. the same is true for policies of discretion such as that of the ICRC (which should clarify and communicate its role, goals and practices).
- 84.8 Governmental and non-governmental organizations and the ICRC should not seek to locate missing persons if the families object or if doing so could endanger the missing persons or their families. In such circumstances, they should deal only with the pattern of abuse.
- 85. Format and structure of mechanisms for clarifying the fate of missing persons**
- 85.1 Most situations require the existence of multiple mechanisms (humanitarian, governmental, judicial, non-judicial), with bridges between them, to cover the range of needs experienced by families and communities.
- A. There is no universal mechanism; mechanisms should be oriented towards and adapted to the national context.
  - B. Mechanisms handling the issue of missing persons should deal with the State authorities and armed groups.
  - C. Mechanisms should not be externally imposed.
  - D. Mechanisms have to be independent and impartial in outlook and working methods.

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- E. The involvement of international organizations lends credibility to the process, even if it is national.
- F. State reparations and support for victims / families should be part of the package.
- G. Each mechanism should be composed in accordance with its aims and comprise competent people only.
- H. Each mechanism should be independent; it should not be donor driven.
- I. Existing mechanisms for a given situation should coordinate with and consult each other to avoid duplication and contradictions in procedure.
- J. Memoranda of understanding between mechanisms should be used to clarify how information is to be shared, how the caseload is to be divided in the event of large-scale disappearances where the regular justice system cannot handle all cases, and how to sort cases according to the seriousness of the crime and the rank of the perpetrator.
- K. There should be no overarching institution so as to prevent bureaucratization.

85.2 The State authorities, armed groups and any others involved should recognize that the victims' families may have diverse and even divergent needs, and therefore are best served by multiple mechanisms rather than by one single mechanism. Multiple mechanisms are required to meet the needs of the families of missing persons.

### 86. Multilateral mechanisms

- 86.1 Mechanisms bringing the (former) warring parties together are helpful in locating missing persons if a third party (such as the ICRC) is actively involved, but above all if the parties concerned have a clear political will to find the missing.
- 86.2 Before establishing such a mechanism, the effectiveness of a multilateral approach should be analysed.
- 86.3 No humanitarian organization acting as a third party should become a hostage to or allow its mission to be perverted by politics.
- 86.4 Such mechanisms should have a built-in review process that allows them to evaluate their effectiveness and warns them when they are being used as a smokescreen to hide the fact that no results are forthcoming or for purposes other than those intended.
- 86.5 In the absence of political will or when the mechanism is being used as an alibi, the third party should be able to withdraw from the process. It should be ready, however, to help reactivate the mechanism if the parties show tangible signs of renewed political will. Its withdrawal should be the subject of a clear communication to the families and the other players involved.

### 87. Judicial mechanisms

- 87.1 The term "judicial mechanisms" refers to **routine** criminal proceedings, which vary widely from one legal system and one sociological and historical context to another, give rise to different interpretive traditions, etc.
  - A. Investigations carried out pursuant to court actions can marshal the resources and authority of the State to procure information on the perpetrators and immediate circumstances of a crime. In some cases, judicial investigations may run parallel to the interests of the families; in others, however, those interests may diverge and judicial mechanisms may be torn between the victims' need for **information** and the prosecution's goal of identifying those who can be proven to be legally culpable.
  - B. Judicial mechanisms are seen as the paradigmatic means of providing the victims' families with an effective vehicle for holding the perpetrators **accountable** for their actions. However, given the resource-intensive nature of the criminal justice process, judicial systems may not always have the institutional capacity to meet the families' needs for accountability.
  - C. Judicial mechanisms can be a symbol of the State's **acknowledgment** of the violation and its direct or indirect culpability. However, the families may experience the procedural hurdles such mechanisms entail as holding "acknowledgment" hostage to the legal process.
  - D. In short, while judicial mechanisms perform an important role and have the potential to address many of the families' priorities, routine criminal justice mechanisms are also often not equal to the enormity of the families' needs.
- 87.2 Whenever judicial mechanisms are implemented, any information uncovered during a criminal investigation that can shed light on the fate of a missing person should be provided to the family, in a manner and as soon as compatible with the judicial guarantees and effective prosecution.

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### 88. Non-judicial mechanisms

- 88.1 The term “non-judicial mechanisms” refers to an open-ended category of mechanisms that incorporates a diverse array of initiatives, such as:
- A. combinations of rewards, incentives, and threats to encourage cooperation from reluctant witnesses and perpetrators;
  - B. special prosecutors, truth commissions, and other commissions of inquiry;
  - C. investigation and reporting by national or international non-governmental human rights organizations;
  - D. international fact-finding by the UN and regional bodies;
  - E. reparation programmes, whether symbolic or material, national or international;
  - F. institutional reform;
  - G. indigenous forms of truth-seeking, justice and reconciliation;
  - H. public information campaigns about those who are missing.
- 88.2 In some contexts, the majority of the victims may not be able to turn to the courts, or the ordinary justice system may not be in a position to handle all cases. It is in that event that the need may arise for non-judicial mechanisms such as truth commissions. Such mechanisms may be:
- A. better positioned to elicit information;
  - B. able to mirror society during a period of crisis;
  - C. able to help a society heal and reconstruct after a civil war.
- 88.3 Judicial and non-judicial mechanisms are not necessarily alternatives; rather, they need to find common protocols for sharing information and other resources to address the families’ needs for information, accountability and acknowledgment.
- 88.4 For **truth commissions** to be effective, certain conditions should be fulfilled (see also **Annex Y: About truth commissions and national human rights committees**); for example:
- A. they should work in accordance with standardized principles such as the *Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights* (the Paris Principles; A/RES/48/134 of 20 December 1993);
  - B. truth commission should have quasi judicial powers for investigations (e.g., the power to subpoena witnesses and information), but must meet the requirements of due process;
  - C. there should be a credible threat of prosecution or other sanctions.

### 89. The need for mechanisms to be complementary and coordinated

- 89.1 To maximize effectiveness, the different mechanisms mentioned above need to coordinate their work, and the institutions addressing different aspects of the victims’ needs and priorities need to cooperate.
- 89.2 Mechanisms should be complementary.
- 89.3 All mechanisms dealing with the issue of missing persons should coordinate their activities and should exchange information, except if such an exchange would jeopardize their access to information (see 39).
- 89.4 Mechanisms must constantly communicate and consult with all sectors of society.
- A. They should systematically clarify their goals and working methods.
  - B. They should form partnerships with NGOs, which may:
    - a. play a crucial watchdog role;
    - b. help catalyze victim / family organizations;
    - c. help re-integrate the victims and facilitate society's acceptance of them.
  - C. They should nevertheless be careful not to boost NGOs artificially and not to expose them to danger, including by receiving information from them.
- 89.5 Care should be taken not to put in place mechanisms that go in contradictory directions:
- A. the proceedings should not incite the perpetrators to destroy evidence or inhibit access to information;
  - B. mechanisms and their tasks should not be duplicated;
  - C. mechanisms should be encouraged to share information with each other.

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### 90. The role of the families within mechanisms for clarifying the fate of missing persons

- 90.1 Mechanisms should inform the families about (see also 74, 75 and 77):
- A. their work and limitations;
  - B. other mechanisms working on the issue;
  - C. the responsiveness of the (former) parties;
  - D. the chances of success and the probability of finding the missing person alive, or of finding the remains through exhumation and forensic identification;
  - E. the possibilities for obtaining reparation and punishing those responsible.
- 90.2 Any direct participation by the families in the mechanisms and in processes such as exhumation and the sharing of information should be dealt with in a sensitive and culturally appropriate manner (see also 43.3, 74 and 75).
- A. Due care should be taken that the families are not manipulated and do not manipulate or exploit the issue.
  - B. Due care should be taken that the information given is not used for propaganda purposes.
  - C. Mechanisms may withhold information from the families if their effectiveness depends on them doing so.
- 90.3 Mechanisms should promote a holistic approach to the families.
- A. They should promote legal, psychological, financial, social and medical services to meet the families' needs (see 44 to 49).
  - B. They should promote the establishment of a lobby and alliances that stand above political interests or parties (see 54).
  - C. They should help the families to overcome political bias and manipulation and to stand united above political interests or parties in the shared goal of clarifying the fate of their missing relatives.
- 90.4 Mechanisms have a responsibility not to perpetuate the families' suffering or to give them false hopes.
- A. They should consider a person missing until that person has been found or there is credible evidence of death.
  - B. They may consider a case settled on the basis of circumstantial / credible evidence (even if the person's fate has not been clarified to the satisfaction of the families). Such a decision should be without prejudice to the issue of the perpetrators' accountability and should not preclude the discovery of additional elements (such as the location and identification of the remains) at a later stage.
  - C. Mechanisms should help the families to accept reality, put the uncertainty behind them and start mourning, with the necessary professional psychological support, and to settle their cases administratively.



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### **XII. The ICRC's pledges for further action**

91. The ICRC will continue to promote respect for international humanitarian law by providing State authorities with assistance for the ratification of or adhesion to humanitarian treaties and the adoption of national measures of implementation. In non-international armed conflicts, the ICRC will encourage parties to the conflict to bring into force the provisions of international humanitarian law. Insofar as the ICRC and judicial mechanisms have a shared goal, namely to ensure respect for international humanitarian law, the ICRC supports the existence of mechanisms for the repression of criminal violations of that law.
92. In international, regional and national fora, the ICRC will insist on the essential role of international humanitarian law and international human rights law as essential factors to better prevent people from becoming unaccounted for, ascertain the fate of missing persons and reinforce the families' rights to information, accountability and acknowledgment. The ICRC will in particular further support the draft convention on the protection of all persons from enforced disappearance being prepared by the open-ended working group of the Commission on Human Rights.
93. In the framework of its activities to spread knowledge of the law among armed and security forces / armed groups, the ICRC will discuss the importance of issuing and implementing Standing Operating Procedures, particularly regarding identity discs, communication between the members of armed and security forces / armed groups and their families and the handling of the dead.
94. The ICRC will promote the importance for all those involved in the management of information to abide by strict rules regarding the legal protection of personal data and human remains, including genetic information.
95. The ICRC will promote, in the field and from its headquarters, coordination between those striving to prevent people from becoming unaccounted for and to clarify the fate of those who are missing.
96. The ICRC will work for the effective implementation of standards regarding the collection of information. It will promote the centralization of personal data collected for humanitarian purposes and offer its services to that end, the nature of its mandate making it the appropriate organization to do this. It will share information whenever it is in the best interests of the victims and within its mandate and operational methods to do so.
97. The ICRC will handle its relations with the State authorities, including with the judiciary, and armed groups in a way that does not jeopardize its dialogue with all the players or its access to any victims of armed conflict or internal violence.
98. On the basis of information regarding persons who have become or risk becoming unaccounted for, the ICRC will systematically approach the State authorities and armed groups as it deems appropriate to remind them of their obligations and to ask that practical measures be implemented to put an end to the phenomenon or to the risk.
99. The ICRC will continue to aim systematically to obtain access to any civilian population affected by armed conflict or internal violence. When this is not possible, it will develop its relationship with any player having direct access to the population for the purposes of taking indirect preventive measures. Whenever necessary, it will consider individually registering and following up people at risk, in coordination with the State authorities, armed groups and the other players present; it will systematically continue to register and follow up unaccompanied children.
100. The ICRC will continue to aim systematically to obtain access to persons deprived of their liberty for reasons related to armed conflict or internal violence, from the time of their arrest or capture until their release. It will endeavour to ensure that they are registered and their cases adequately followed up. It will promote cooperation and complementarity with other mechanisms accessing to persons deprived of their liberty.
101. Red Cross / Red Crescent family news networks will continue to be systematically implemented and developed. The ICRC, as coordinator, will seek to obtain the support of the National Red Cross / Red Crescent Societies whenever possible and of any other organizations accepting the rules by which the networks operate and in a position to enhance them. It will promote action taken in this field by other actors as complementary means of communication.

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- 102.** The ICRC will always consider collecting witness accounts and/or tracing requests, and will compile individual files, as soon as possible after armed conflict or internal violence has broken out, even when the possibilities for active tracing and submission of cases to the concerned authorities are limited. It will endeavour not to raise the families' hopes in vain. If the situation does not allow for comprehensive treatment of individual files, the ICRC will use the information collected for any other action it can take in the context (comprehension of phenomena and patterns of abuses; representations on specific topics; the presentation of individual cases to the authorities concerned). Whenever a situation requires a long-term approach, any new possibility for reactivating tracing activities or for submitting cases will be seized.
- 103.** The ICRC will always try to define the framework for its action on behalf of missing / sought persons with all the relevant authorities and any other organizations involved, such as the National Red Cross / Red Crescent Societies, at the very outset of armed conflict or internal violence, and will discuss measures to overcome obstacles. It will stress the importance of distinguishing between humanitarian and political issues; it will insist on having direct access to the families, to persons deprived or formerly deprived of their liberty, and to any other sources of information.
- 104.** As soon as the situation permits, at the latest during a period of transition, the ICRC will assess (and regularly reassess) the specific needs of the families of missing persons in a given context. In order to decide whether and how it will act, the ICRC will assess those needs as compared to the needs of other victims, the priority they should be given in terms of all the needs identified and how they may be covered by local or other structures. The families of missing persons constitute a sub-group of the victims in the situations under consideration, and as a general rule some of their needs are shared by some or all of the other victims. The ICRC will therefore take care to ensure that support for the families of missing persons does not discriminate against other victims with identical needs. Specific support programmes should address exclusively those needs related to the means of coping with the specific problems brought about by uncertainty about the fate of relatives and should not perpetuate the victimization of the families. Needs common to several target groups should be treated identically.
- 105.** Whenever possible, the ICRC will provide assistance in cooperation with local structures, which it will aim to strengthen. At the very least, the ICRC will coordinate its assistance activities with those of local structures. The ICRC will also not hesitate to mobilize organizations with specific competencies to become involved in assistance programmes for the families of missing persons.
- 106.** The ICRC, as it deems appropriate, will make the necessary representations to the State authorities to ensure that provisions regarding the legal situation of missing persons and the consequences for family members, including the civil status of spouse and children, guardianship and parental authority and the administration of the missing person's estate, are enacted in domestic legislation.
- 107.** Whenever possible, the ICRC will help the families understand their rights and will help them call on the existing administrative services.
- 108.** Whenever possible, the ICRC will encourage and facilitate, consistent with its mandate and operational methods and means, the development of independent family networks and associations as a means of support for the families of missing persons.
- 109.** The ICRC, as it deems appropriate, will systematically remind the parties to armed conflicts and situations of internal violence of their obligations regarding information on and the handling of the dead.
- 110.** The ICRC will endeavour systematically to collect information on the dead and to support the State authorities, the armed and security forces, armed groups and health facilities in their efforts to handle the dead properly. ICRC staff will gradually be given non-specialist training in the management of human remains. The ICRC will promote these activities among other players that can also contribute to the collection of information on the dead and the proper handling of human remains.
- 111.** The ICRC will promote the definition of a framework and best practice guidelines for the collection, exhumation and identification of human remains by forensic specialists, in general and in the field. It will insist that the exhumation process include, whenever necessary, both identification and the collection of evidence for criminal investigations. It will advocate for identification processes to be adapted to contexts; whenever DNA techniques are deemed necessary it will endeavour to ensure their implementation in accordance with best practice guidelines. It will ensure that communities and families are involved and that a communication strategy is defined and implemented.

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112. The ICRC will provide whatever support it can to the concerned authorities defining such a framework and best practice guidelines. Whenever necessary, it will also help the authorities implement any agreed framework by mobilizing the necessary resources (for example, forensic specialists to support local capacity) or by providing direct support (for instance, by collecting *ante mortem* data and possibly samples for DNA analysis). It will continue to act as a neutral intermediary for such activities whenever necessary. In exceptional cases only, in the absence of any competent authorities and with the authorization of the local person in charge, the ICRC might act as substitute and take responsibility for exhumations, but for the sole purpose of identification.
113. The ICRC will provide the authorities concerned, on the basis of an agreed framework for the exhumation and/or identification process and consistent with its operational methods, with any information it has on the dead (graves and human remains).
114. Measures will be taken to ensure that ICRC staff dealing with the families of missing persons, informing them about the death of a relative, or returning personal effects or human remains to them, have adequate knowledge of the local culture and customs regarding death.
115. The ICRC will encourage and support the establishment of an Information Bureau and of a Grave Registration Service, by all the parties involved, in peacetime or at the latest when armed conflict breaks out.
116. When armed conflict or internal violence ends, the ICRC will systematically try to promote the inclusion of measures concerning missing persons and their families in any settlement (such as a cease-fire agreement, peace accord or new governmental policy). Those measures should be implemented independently of other measures of a political nature and should not be based on reciprocity.
117. When appropriate, the ICRC will promote the establishment of multilateral mechanisms involving all the (former) parties, the ICRC and potentially any other players working together, in accordance with agreed procedures, towards a common defined objective concerning missing persons and their families and meeting regularly round the same table. Concerning the persons unaccounted for, the mandate of such mechanisms should address at least the following topics: the compilation of comprehensive files, the sharing of information by the relevant authorities (on hidden persons deprived of their liberty, on events with dates and places, on burial sites, on the location of mines, etc.), access to graves and human remains and the process of exhuming and identifying human remains. The mandate should also include the rights of the families of missing persons to be informed about the fate of their relatives and, when relevant and feasible, to have their relatives' remains returned to them.
118. The ICRC will provide as much support as possible to mechanisms that are set up independently and whose objectives include the clarification of the fate of missing persons and support for their families.
119. All the above-mentioned pledges are already the subject of ICRC internal documents and of instructions for ICRC staff. Their implementation will be progressively included in ICRC training programmes.
120. The ICRC will transmit the content of the present report and the outcome of the International Conference of Governmental and Non-Governmental Experts due to take place in Geneva on 19-21 February 2003 to appropriate fora, in particular to the next International Conference of the Red Cross and Red Crescent. It will also do all in its power to promote the implementation of the operational best practices among all those working in armed conflict and internal violence.

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### XIII. Annexes

#### Annex A: Legal references

1. GCI-IV: common Art. 1; API: Arts. 1(1), 89.
2. API: Art. 32.
3. API: Arts. 32, 33; GCIV: Arts. 136-141.
4. GCIV: Arts. 26, 27(1), 49(3), 82(2), 116; API: Arts. 74, 75(5), 77(4); HRIV: Art. 46; ACHR: Arts. 17(1), 27(2).
5. GCI: Arts. 12, 50; GCII: Arts. 12, 51; GCIII: Arts. 13, 130; GCIV: Arts. 27, 147; API: Arts. 75(2), 85; Rome Statute: Arts. 6(a), 7(1)(a), 8(2)(a)(i), 8(2)(b)(vi); ICCPR: Arts. 4, 6; ECHR: Art. 2, 15(2); ACHR: Arts. 4, 27(2); ACHPR: Art. 4.
6. GCI: Art. 15; GCII: Art. 18; GCIV: Art. 16; API: Art. 10.
7. GCI: Art. 12; GCII: Art. 12; GCIII: Art. 13; GCIV: Arts. 5(3), 27(1); API: Arts. 10(2), 75(1); HRIV: Art. 4.
8. GCI: Arts. 12(2), 50; GCII: Arts. 12(2), 51; GCIII: Arts. 17(4), 87(3), 89, 130; GCIV: Arts. 32, 147; API: Arts. 75(2), 85; Rome Statute: Arts. 7(1)(f), 7(2)(e), 8(2)(a)(ii), 55(1)(b); 1984 Conv. against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Arts. 1, 2; ICCPR: Arts. 4(2), 7; ECHR: Arts. 3, 15(2); ACHR: Arts. 5(2), 27(2); ACHPR: Art. 5; 1985 Inter-American Conv. to Prevent and Punish Torture: Arts. 1, 5; 1989 Conv. on the Rights of the Child: Art. 37.
9. GCIV: Arts. 34, 147; API: Arts. 75(2)(c), 85; Rome Statute: Art. 8(2)(a)(viii).
10. GCIV: Arts. 43, 78; API: Art. 75(1); Rome Statute: Arts. 55(1)(d), 59(2).
11. Rome Statute: Arts. 7(1)(i), 7(2)(i); 1994 Inter-American Conv. on the Forced Disappearance of Persons: Art. X. This rule is not formulated as such in international humanitarian treaty law, but the practice of enforced disappearance would violate other rules stated above (e.g. rules 10.3, 10.7, 10.10 to 10.13, 10.15, 10.16, 10.34).
12. GCI: Arts. 12(2), 31; GCII: Arts. 12(2), 30; GCIII: Arts. 14, 16, 43, 61, 88; GCIV: Arts. 13, 27, 54, 98, 118; API: Preamble, Arts. 9(1), 69(1), 70(1), 75(1), 85(4)(c); Rome Statute: Arts. 7(1)(h), 7(1)(j).
13. GCI: Art. 49(4); GCII: Art. 50(4); GCIII: Arts. 84(2), 86, 96(3)-(4), 99, 102-108, 129(4), 130; GCIV: Arts. 5, 33, 66, 67, 71-78, 117-126, 146(4), 147; API: Arts. 75(4), (7), 85(1), (4)(e); HRIV: Art. 50; Rome Statute: Arts. 8(2)(a)(vi), 20(2), 25, 55, 60, 63(1), 64, 66, 67-69, 76; Second Protocol (1999) to the 1954 Hague Conv. for the Protection of Cultural Property in the Event of Armed Conflict: Art. 17(2).
14. GCI: Art. 4; GCII: Art. 5; GCIII: Arts. 4B, 109(2), 110, 111, 114-116; GCIV: Arts. 24(2), 36(1), 132(2); API: Art. 19; 1907 Hague Conv. (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land: Arts. 11, 12, 14.
15. GCIII: Arts. 72, 73; GCIV: Arts. 23, 59, 108, 109; API: Art. 70.
16. API: Arts. 48, 51, 52, 85(3)(a); Rome Statute: Arts. 8(2)(b)(i), 8(2)(b)(ii); Protocol II (amended 1996) to the 1980 CCW: Arts. 1(2), 3(7); Protocol III (1980) to the 1980 CCW: Art. 2; 1954 Hague Conv. for the Protection of Cultural Property in the Event of Armed Conflict: Art. 4; Second Protocol (1999) to the 1954 Hague Conv. for the Protection of Cultural Property in the Event of Armed Conflict: Art. 6.
17. API: Arts. 51(4)-(5), 85(3)(b); Protocol II (amended 1996) to the 1980 CCW: Arts. 1(2), 3(8)-(9); Protocol III (1980) to the 1980 CCW: Art. 2.
18. API: Arts. 57, 58; HRIV: Art. 26; Protocol II (amended 1996) to the 1980 CCW: Arts. 1(2), 3(10)-(11); Second Protocol (1999) to the 1954 Hague Conv. for the Protection of Cultural Property in the Event of Armed Conflict: Arts. 6(d), 7, 8.
19. GCI: Art. 19; GCIII: Art. 23; GCIV: Art. 28; API: Arts. 12(4), 51(7); Rome Statute: Art. 8(2)(b)(xxiii).
20. GCIV: Arts. 49, 147; API: Art. 85(4)(a); Rome Statute: Arts. 7(1)(d), 8(2)(a)(vii), 8(2)(b)(viii).
21. GCIV: Art. 49(3); API: Art. 78.
22. GCIV: Arts. 45, 49(2).
23. This is in application of the general rule of non-discrimination, see 10.14.
24. GCIV: Arts. 49, 147; API: Art. 85(4)(a); Rome Statute: Arts. 8(2)(a)(vii), 8(2)(b)(viii).
25. GCI: Art. 12(4); GCII: Art. 12(4); GCIII: Arts. 14(2), 16, 25, 44, 45, 49, 88(2)-(3); GCIV: Arts. 14(1), 17, 27, 76(4), 82, 85, 119; API: Arts. 8(a), 70(1), 75(5), 76; APII: Arts. 4(2)(e), 5(2)(a), 6(4).

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26. GCIV: Arts. 23(1), 24(1), 38(5), 50, 76(5), 89(5); API: Arts. 8(a), 70(1), 77(1); 1989 Conv. on the Rights of the Child: Art. 38; 1990 African Charter on the Rights and Welfare of the Child: Art. 22; Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflict: Arts. 1-4, 6; ACHR: Arts. 19, 27(2).
27. GCIII: Arts. 122, 123; GCIV: Arts. 136, 137, 140; HRIV: Art. 14(1).
28. GCIII: Art. 122(4); GCIV: Art. 138(1).
29. GCIV: Art. 79.
30. GCIV: Arts. 41-43.
31. GCIV: Art. 78.
32. GCIV: Art. 68.
33. GCIV: Art. 132(1).
34. GCIV: Art. 82(2)-(3); API: Art. 77(4).
35. GCIII: Arts. 25(4), 29(2), 97(4), 108(2); GCIV: Arts. 76(4), 82, 85(4), 124(3); API: Art. 75(5).
36. GCIV: Art. 116.
37. GCIII: Art. 105; GCIV: Arts. 72, 126.
38. GCIII: Arts. 56(3), 126; GCIV: Arts. 76(6), 96, 143; Art. 56(3) of GCIII and Art. 96 of GCIV state that delegates of the Protecting Power, the ICRC or other agencies providing relief to POWs may visit labour detachments.
39. HRIV: Art. 20; GCIII: Arts. 109-117 (direct repatriation and accommodation in neutral countries of prisoners of war with special needs), Arts. 118-119 (release and repatriation of prisoners of war at the close of hostilities); GCIV: Arts. 35, 45(4), 132-135 (release, repatriation and accommodation in neutral countries of civilian internees); API: Art. 85(4)(b).
40. GCIV: Art. 25.
41. GCIII: Arts. 35, 70, 71, 76; GCIV: Arts. 25(3), 93, 106, 107, 112.
42. GCIII: Art. 74(1); GCIV: Art. 110; HRIV: Art. 16.
43. GCIII: Art. 75; GCIV: Art. 111.
44. GCI: Art. 15; GCII: Art. 18; GCIV: Art. 16; API: Art. 33.
45. GCI: Art. 15; GCII: Art. 18; GCIV: Art. 16; API: Art. 34.
46. GCI: Arts. 16, 17; GCII: Arts. 19, 20; GCIII: Arts. 120, 121; GCIV: Arts. 129, 131.
47. GCI: Art. 17; GCII: Art. 20; GCIII: Art. 120; GCIV: Art. 130; API: Art. 34(1).
48. GCI: Art. 17; GCII: Art. 20; GCIII: Art. 120; GCIV: Art. 130; API: Art. 34.
49. GCI: Arts. 16, 17; GCII: Art. 19; GCIII: Art. 120; GCIV: Art. 130; API: Art. 33.
50. API: Art. 34(2)(c).
51. GCI: Arts. 16, 17(4); GCII: Arts. 19(2), 20; GCIII: Arts. 120, 122, 123; GCIV: Arts. 130, 136-138, 140; API: Art. 33(3); HRIV: Arts. 14, 16.
52. GCIII: Art. 122(7); GCIV: Art. 137(1); API: Art. 33(3); HRIV: Art. 14.
53. GCIII: Art. 74; GCIV: Art. 110; HRIV: Art. 14.
54. GCI: Art. 16; GCII: Art. 19; GCIII: Arts. 120, 122; GCIV: Arts. 129, 138(1), 139; API: Art. 34.
55. GCIII: Art. 17, Annex IV.A.
56. GCI: Art. 40(2)-(4), 41(2), Annex II; GCII: Art. 42(2)-(4), Annex. For the definition of medical and religious personnel, see Arts. 24, 26, 27 of GCI, Arts. 36, 37 of GCII and Art. 8(c)-(d) of API.
57. GCI: Art. 16; GCII: Art. 19; GCIII: Arts. 17, 70, 122, Annex IV.B.
58. GCIV: Arts. 136-138; HRIV: Art. 14.
59. GCI: Art. 16; GCII: Art. 19.
60. GCI: Arts. 16, 17, 40(2); GCII: Arts. 19, 20, 42(2); GCIII: Art. 120; GCIV: Arts. 129, 130, 139; HRIV: Arts. 14, 19; API: Art. 34.
61. GCI: Art. 17(3); GCII: Art. 20(2); GCIII: Art. 120(6); GCIV: Art. 130(3).
62. API: Art. 78(3).
63. GCIV: Arts. 137(2), 140(2).
64. GCIII: Arts. 74, 124; GCIV: Arts. 110, 141; HRIV: Art. 16; 1994 Universal Postal Convention: Art. 7(3).
65. APII: Arts. 4(3)(b), 5(2)(a); ACHR: Arts. 17(1), 27(2).
66. GCI-IV: common Art. 3; APII: Art. 4(2); Rome Statute: Arts. 6(a), 7(1)(a), 8(2)(c)(i); ICCPR: Arts. 4, 6; ECHR: Arts. 2, 15(2); ACHR: Arts. 4, 27(2); ACHPR: Art. 4.
67. GCI-IV: common Art. 3; APII: Arts. 7, 8.
68. GCI-IV: common Art. 3; APII: Arts. 4, 5(3), 7(2).

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69. GCI-IV: common Art. 3; APII: Art. 4(2); Rome Statute: Arts. 7(1)(f), 7(2)(e), 8(2)(c)(i), 55(1)(b); 1984 Conv. against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Arts. 1, 2; ICCPR: Arts. 4(2), 7; ECHR: Arts. 3, 15(2); ACHR: Arts. 5(2), 27(2); ACHPR: Art. 5; 1985 Inter-American Conv. to Prevent and Punish Torture: Arts. 1, 5; 1989 Conv. on the Rights of the Child: Art. 37.
70. GCI-IV: common Art. 3; APII: Art. 4(2)(c); Rome Statute: Art. 8(2)(c)(iii).
71. GCI-IV: common Art. 3; APII: Arts. 2(1), 4(1), 7(2), 18(2); Rome Statute: Arts. 7(1)(h), 7(1)(j).
72. GCI-IV: common Art. 3; APII: Art. 6(2)-(3); Rome Statute: Arts. 8(2)(c)(iv), 20(2), 25, 55, 60, 63(1), 64, 66, 67-69, 76; Second Protocol (1999) to the 1954 Hague Conv. for the Protection of Cultural Property in the Event of Armed Conflict: Art. 17(2).
73. APII: Arts. 5(1)(c), 18(2).
74. GCI-IV: common Art. 3; APII: Arts. 4, 13; Protocol II (amended 1996) to the 1980 CCW: Art. 1(2)-(3); Protocol III (1980) to the 1980 CCW: Art. 2; Rome Statute: Arts. 8(2)(e)(i), 8(2)(e)(xii).
75. Protocol II (amended 1996) to the 1980 CCW: Arts. 1(2)-(3), 3(8), 3(9); Protocol III (1980) to the 1980 CCW: Art. 2.
76. APII: Art. 13(1); Protocol II (amended 1996) to the 1980 CCW: Arts. 1(2)-(3), 3(10), 3(11); Second Protocol (1999) to the 1954 Hague Conv. for the Protection of Cultural Property in the Event of Armed Conflict: Arts. 6(d), 7, 8, 22.
77. APII: Arts. 4, 13(1).
78. APII: Art. 17; Rome Statute: Arts. 7(1)(d), 8(2)(e)(viii).
79. APII: Arts. 4(3)(b), 17(1).
80. APII: Art. 4(3); 1989 Conv. on the Rights of the Child: Art. 38; 1990 African Charter on the Rights and Welfare of the Child: Art. 22; Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflicts: Arts. 1-4, 6; ACHR: Arts. 19, 27(2).
81. APII: Art. 5(2)(a).
82. Although there are no specific treaty provisions requiring that the ICRC be granted access to persons deprived of their liberty in non-international armed conflicts, this rule is widely recognized as representing customary international law applicable in non-international armed conflicts.
83. APII: Arts. 5(4), 6(5).
84. APII: Art. 5(2)(b).
85. APII: Art. 8.
86. APII: Art. 8.
87. APII: Art. 8.
88. 1948 Universal Declaration of Human Rights: Art. 12; ECHR: Art. 8; ICCPR: Arts. 17, 23(1); ICESCR: Art. 10(1); ACHR: Arts. 17, 27(2); ACHPR: Art. 18; Additional Protocol (1988) to the ACHR in the Area of Economic, Social and Cultural Rights: Art. 15(1); 1989 Conv. on the Rights of the Child: Arts. 9, 10, 37; 1990 African Charter on the Rights and Welfare of the Child: Arts. 18, 19, 25(2)(b).
89. ICCPR: Arts. 4, 6(1); ECHR: Arts. 2, 15(2); ACHR: Arts. 4, 27(2); ACHPR: Art. 4; Rome Statute: Arts. 6(a), 7(1)(a).
90. ACHPR: Art. 5; ICCPR: Art. 10(1); ACHR: Art. 5.
91. ICESCR: Arts. 11, 12; 1948 Universal Declaration of Human Rights: Art. 25(1); Additional Protocol (1988) to the ACHR in the Area of Economic, Social and Cultural Rights: Arts. 10, 12; ACHPR: Art. 16; 1951 Conv. Relating to the Status of Refugees: Arts. 20, 21, 23; 1989 Conv. on the Rights of the Child: Art. 22; 1990 African Charter on the Rights and Welfare of the Child: Art. 23.
92. 1984 Conv. against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Arts. 1, 2; ICCPR: Arts. 4(2), 7; ECHR: Arts. 3, 15(2); 1987 European Conv. for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment: Preamble; ACHR: Arts. 5(2), 27(2); 1985 Inter-American Conv. to Prevent and Punish Torture: Arts. 1, 5; ACHPR: Art. 5; 1989 Conv. on the Rights of the Child: Art. 37; Rome Statute: Arts. 7(1)(f), 7(2)(e), 55(1)(b).
93. ECHR: Art. 5; ICCPR: Arts. 9, 12; ACHR: Arts. 7, 22; ACHPR: Art. 6; 1973 Conv. on Crimes Against Internationally Protected Persons, including Diplomatic Agents: Art. 2; 1979 International Conv. against the Taking of Hostages: Arts. 1, 8, 12.
94. 1948 Universal Declaration of Human Rights: Art. 3; ICCPR: Art. 9(1); ECHR: Art. 5(1); ACHR: Art. 7(2)-(3); ACHPR: Art. 6; 1989 Conv. on the Rights of the Child: Art. 37; Rome Statute: Art. 55(1)(d).
95. This rule is not formulated as such in international human rights treaty law, but its violation would constitute a violation of other rules stated above (e.g. 12.2 to 12.4, 12.6 to 12.8, 12.10, 12.12, 12.21 and 12.23).
96. 1994 Inter-American Conv. on Forced Disappearance of Persons: Preamble, Arts. I, II, X, XI, XII; Rome Statute: Arts. 7(1)(i), 7(2)(i).

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97. UN Charter: Art. 1(3); 1948 Universal Declaration of Human Rights: Arts. 2, 7; ICCPR: Arts. 2, 4; ECHR: Arts. 14, 15; ACHR: Arts. 1, 27; ACHPR: Art. 2; 1965 Convention on the Elimination of Racial Discrimination: Arts. 2, 5; 1989 Conv. on the Rights of the Child: Art. 2(1); 1973 International Convention on the Suppression and Punishment of Apartheid: Art. I; Rome Statute: Arts. 7(1)(h), 7(1)(j).
98. ICCPR: Arts. 9(3), 14; ECHR: Arts. 5(3), 6, 40(1); Protocol No. 7 (1984) to the ECHR: Arts. 2, 4; ACHR: Arts. 7, 8; ACHPR: Art. 7; 1989 Conv. on the Rights of the Child: Art. 40(2)(b); Rome Statute: Arts. 20(2), 55, 60, 63(1), 64, 66, 67-69, 76; 1994 Inter-American Conv. on Forced Disappearance of Persons: Art. X.
99. Rome Statute: Art. 7(1)(d) ("For the purposes of paragraph 1, "attack directed against the civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such an attack." Rome Statute: Art. 7(2)(a).); ICCPR: Art. 13; Protocol No. 4 (1963) to the ECHR: Arts. 3, 4; Protocol No. 7 (1984) to the ECHR: Art. 1; ACHR: Art. 22; ACHPR: Art. 12(5); 1984 Conv. against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Art. 3; 1989 Indigenous and Tribal Peoples Conv.: Art. 16.
100. 1948 Universal Declaration of Human Rights: Art. 13(2); ICCPR: Art. 12(4); Protocol No. 4 (1963) to the ECHR: Art. 3; ACHR: Art. 22(5); ACHPR: Art. 12(2); 1984 Conv. against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Art. 3; 1969 Conv. Governing the Specific Aspects of Refugee Problems in Africa: Art. 5; 1989 Indigenous and Tribal Peoples Conv.: Art. 16.
101. 1951 Conv. Relating to the Status of Refugees: Arts. 32, 33; 1969 Conv. Governing the Specific Aspects of Refugee Problems in Africa: Art. 2(3); 1984 Conv. against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Art. 3.
102. This is in application of the general rule of non-discrimination, see 12.11; 1969 Conv. Governing the Specific Aspects of Refugee Problems in Africa: Arts. 4, 5; 1951 Conv. Relating to the Status of Refugees: Art. 3.
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Resolution XI of the 21st International Conference of the Red Cross (Istanbul, 1969) - Protection of prisoners of war  
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Resolution II of the 24th International Conference of the Red Cross (Manila, 1981) - Forced or involuntary disappearances  
Resolution XXI of the 24th International Conference of the Red Cross (Manila, 1981) - International Red Cross aid to refugees  
Resolution IX (para. 5) of the 25th International Conference of the Red Cross (Geneva, 1986) - Protection of children in armed conflicts  
Resolution XIII of the 25th International Conference of the Red Cross (Geneva, 1986) - Obtaining and transmitting personal data as a means of protection and preventing disappearances

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Resolution XIV of the 25th International Conference of the Red Cross (Geneva, 1986) - National Information Bureaux

Resolution XV of the 25th International Conference of the Red Cross (Geneva, 1986) - Cooperation between

National Red Cross and Red Crescent Societies and governments in the reuniting of dispersed families

Resolution 2 of the 26th International Conference of the Red Cross and Red Crescent (Geneva, 1996) - Protection of the civilian population in period of armed conflict

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### Annex B: Special protection to which children are entitled: legal references

1. GCIV: Arts. 27-34; API: Art. 75.
2. API: Arts. 48, 51.
3. API: Art. 77; 1989 Conv. on the Rights of the Child: Art. 38; 1990 African Charter on the Rights and Welfare of the Child: Art. 22; ACHR: Arts. 17, 19, 27(2).
4. GCIV: Arts. 14 (safety zones), 17, 24(2), 49(3), 132(2); API: Art. 78.
5. GCIV: Arts. 16, 23(1), 24(1), 38(5), 50, 81(3), 89(5); API: Arts. 8(a), 70(1), 77(1).
6. GCIV: Arts. 24(1), 50, 94; API: Art. 78(2).
7. GCIV: Art. 24(3).
8. GCIV: Art. 24(1).
9. GCIII: Arts. 35, 70, 71; GCIV: Arts. 25, 93, 106, 107, 112.
10. GCIV: Arts. 26, 50; API: Art. 74.
11. GCIV: Art. 49(3); API: Art. 78.
12. GCIV: Arts. 25, 50, 136-140; API: Art. 78(3).
13. GCIV: Arts. 76(5), 85(2), 89(5), 94, 119(2), 132.
14. GCIV: Arts. 76(5), 82; API: Art. 77(4).
15. GCIV: Arts. 89(5), 91, 127, 132; API: Arts. 75(5), 76.
16. GCIV: Art. 68(4); API: Art. 77(5).
17. Rome Statute: Art. 8(2)(b)(xxvi); API: Art. 77(2); GCIV: Art. 50(2); 1989 Conv. on the Rights of the Child: Art. 38(2)-(3); 1990 African Charter on the Rights and Welfare of the Child: Arts. 2, 22(2) (specifying that children may neither participate nor be recruited below 18 years); 1999 Conv. on the Worst Forms of Child Labour: Arts. 1, 3.
18. API: Art. 77(3); GCIII: Arts. 16, 49.
19. API: Art. 77(2); 1989 Conv. on the Rights of the Child: Art. 38(3).
20. Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflict: Art. 1; 1990 African Charter on the Rights and Welfare of the Child: Arts 2, 22(2) (specifying that children may neither participate nor be recruited below 18 years).
21. Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflict: Art. 2; 1990 African Charter on the Rights and Welfare of the Child: Arts. 2, 22(2).
22. Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflict: Art. 3.
23. Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflict: Art. 4.
24. GCIV: Arts. 26, 27(1), 49(3), 82(2), 116; API: Arts. 74, 75(5), 77(4); HRIV: Art. 46; ACHR: Arts. 17(1), 27(2).
25. GCI-IV: common Art. 3; APII: Art. 4.
26. APII: Art. 13.
27. APII: Art. 4(3); 1989 Conv. on the Rights of the Child: Art. 38; 1990 African Charter on the Rights and Welfare of the Child: Art. 22; ACHR: Arts. 17, 19, 27(2).
28. APII: Art. 4(3)(e).
29. APII: Art. 4(3).
30. APII: Art. 4(3)(b).
31. APII: Arts. 4(3)(b), 17(1).
32. APII: Art. 4(3)(a).
33. APII: Art. 6(4).
34. Rome Statute: Art. 8(2)(e)(vii); APII: Art. 4(3)(c); 1989 Conv. on the Rights of the Child: Art. 38(2)-(3); 1990 African Charter on the Rights and Welfare of the Child: Arts. 2, 22(2) (specifying that children may neither participate nor be recruited below 18 years); 1999 Convention on the Worst Forms of Child Labour: Arts. 1-3.
35. APII: Art. 4(3)(d).
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44. 1989 Conv. on the Rights of the Child: Art. 37(c); ICCPR: Art. 10(2)(b), (3); ACHR: Art. 5(5); 1990 African Charter on the Rights and Welfare of the Child: Art. 17(2)(b).
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46. ICCPR: Art. 6(5); ACHR: Art. 4(5); Protocol to the ACHR to Abolish the Death Penalty (1990): Art. 1; Protocol No. 6 (1983) to the ECHR concerning the abolition of the death penalty: Arts. 1, 2; Second Optional Protocol (1989) to the ICCPR, aiming at the abolition of the death penalty: Arts. 1, 2(1).
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50. 1989 Conv. on the Rights of the Child: Art. 38(3).
51. Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflict: Art. 2; 1990 African Charter on the Rights and Welfare of the Child: Arts. 2, 22(2).
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### Annex C: Legal protection of personal data and human remains: commonly accepted principles

Excerpted from "The legal protection of personal data and human remains, Electronic Workshop, 2 April – 6 May 2002: Final report and outcome" (ICRC/TheMissing/07.2002/EN/1)

The following principles are based on existing international, regional and domestic law.

#### 1. The legal protection of personal data and human remains - Protection of personal data: commonly accepted principles

Principle 1	"Personal data" means any information relating to an identified or identifiable individual.
Principle 2	Personal data shall be collected and processed fairly and lawfully.
Principle 3	The consent of the individual is required for the collection and use of the personal data, except where inappropriate.
Principle 4	The collection and processing of personal data shall be limited to that which is necessary for the purpose identified at the time of collection, or beforehand.
Principle 5	Sensitive data should only be collected and processed with appropriate safeguards.
Principle 6	Personal data should be accurate, complete and updated as is necessary for the purpose for which they are used.
Principle 7	Personal data should be protected by security safeguards appropriate to the sensitivity of the information.
Principle 8	Personal data may not be used, disclosed or transferred for purposes other than those for which they were collected without the consent of the person concerned, except if required by a substantial public interest or for the protection of the vital interests of the person concerned or of others.
Principle 9	Personal data may only be transferred to third parties respecting personal data protection principles.
Principle 10	Personal data should be deleted as soon as the purpose of their collection has been fulfilled, or when no longer necessary. They may, however, be retained for a definite period if required for the benefit of the individual to whom they relate or if essential for the performance of the humanitarian tasks of the organization which collected the data.
Principle 11	Access to personal data should be granted to the individual to whom the data relate. Provision should also be made for the right to challenge the accuracy and completeness of the data and to have them amended as appropriate.

#### 2. The legal protection of personal data and human remains - Identification of human remains: commonly accepted principles

Principle 1	The identity of human remains, and the causes of death, should be established by the competent public authority with due diligence.
Principle 2	During an investigation or an inquest, including in the decision to perform a <i>post mortem</i> examination, the known religious beliefs and opinions of the deceased person and his relatives should be taken into consideration.
Principle 3	When determining the cause and circumstances of death, in particular during an investigation or an inquest, the dignity, honour, reputation and privacy of the deceased person should be respected. All corpses in the custody and possession of an investigating authority should be treated with dignity and respect.
Principle 4	Exhumation must be authorized by the competent authority.
Principle 5	The decision whether to carry out an exhumation should take account the interests of the next-of-kin.

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Principle 6	Exhumation must be carried out in accordance with recognized standards, including health protection standards.
Principle 7	Families should be kept informed of the decisions taken in relation to <i>post mortem</i> examinations, as well as of the results of any such examination.
Principle 8	The remains should be released to family members at the earliest time possible.
Principle 9	The body of the deceased should be restored before being returned to the next-of-kin. Families should be notified if body parts are retained.

### 3. The legal protection of personal data and human remains - Protection of genetic information: commonly accepted principles

Principle 1	The collection, use and disclosure of DNA profiles are subject to the rules relative to the protection of personal data.
Principle 2	Identification of human remains through DNA typing should only be undertaken when other investigative techniques of identification are not adequate.
Principle 3	DNA samples may only be collected and analysed with the informed consent of the individual, except where an overriding public interest dictates otherwise.
Principle 4	Forensic procedures must be carried out by an appropriately qualified person.
Principle 5	DNA information collected for the identification of missing persons or human remains may only be used and disclosed for that specific purpose.
Principle 6	DNA samples and profiles should be destroyed / deleted when the missing persons have been identified, unless they are required for related purposes.
Principle 7	DNA analysis should only be performed by certified or accredited laboratories.
Principle 8	DNA samples, profiles and records should be adequately protected from unauthorized access and use.
Principle 9	DNA profiles or samples should only be disclosed, transferred or compared in the context of international cooperation for the purpose of identification, and only with the consent of the persons concerned, except in determined cases. DNA samples should not be transferred except where the analysis is to be performed abroad.

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### **Annex D: Checklist on the means and methods of restoring and maintaining family contact**

1. "Family" must be defined in each context on the basis of social structure and cultural tradition. The definition should be as broad as possible and include, for example, friends and colleagues, who can be instrumental in indirectly (re)establishing contact between family members. The definition must not, however, be such as to allow family news to be used for political purposes.
2. The population groups at risk of losing contact with relatives are:
  - A. the members of armed forces / armed groups (and religious and medical personnel);
  - B. isolated populations, civilians in conflict areas, displaced persons, refugees, and populations in areas in which there is an established pattern of risk;
  - C. persons deprived of their liberty;
  - D. vulnerable persons, such as children, the elderly and the handicapped;
  - E. aid and humanitarian relief workers.
3. The strategy and priorities adopted to restore and maintain family contact should be defined on the basis of the situation.
4. Those involved in restoring and maintaining family contact are first and foremost the families themselves and the local communities. Others to be involved are:
  - A. State authorities (such as national, regional / provincial and local authorities, the Ministries of Justice, the Interior, Defence, Security and Health and Social Affairs, the Attorney General's Office, the Inspector General of Police, the competent judicial authorities and national human rights institutions);
  - B. armed groups and their leaders;
  - C. national players (for example, the National Red Cross / Red Crescent Society, non-governmental humanitarian and human rights organizations, other members of civil society, including traditional authorities, family and women's associations, religious institutions, trade unions, groups representing a diaspora and the press / media);
  - D. international players (such as foreign governments, the ICRC, the UN and its agencies, the International Organization for Migration, regional organizations, human rights organizations such as Amnesty International and Human Rights Watch, humanitarian organizations such as *Médecins du Monde* and the Save the Children Fund, international financial, professional, trade union or religious organizations and corporations, and multinational corporations).
5. The means available for restoring and maintaining family contact and how to use them may vary from context to context.
  - A. Informal traditional mechanisms are the most important. National, regional and international inter-governmental and non-governmental organizations and the ICRC have a duty to understand these mechanisms and to support them.
  - B. All possible public means must be explored in any given situation:
    - a. telephones, Sat-phones, letters, telex, e-mail, radio, fax, taped messages, posters, bulletin boards, CD-ROMs, videos, photo exhibitions;
    - b. messages broadcast on TV and radio, paid advertisements, personal columns in the written media (including in national / international human rights bulletins);
    - c. use of relays (national / international visiting delegations from organizations, the media, etc.), diplomatic pouches, communications operators in the field.
  - C. In certain situations, in particular armed conflicts, the Red Cross Message is often the best means to use.
  - D. The means used must be carefully selected; they must be adapted to the situation and take into account short and long term considerations.

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- E. Certain means afford a greater degree of privacy than others:
    - a. an agreement of mutual understanding is required on the means to use and on their sensitivity;
    - b. the rules governing the protection of personal data must be respected.
  - F. In order to facilitate and speed up the work of restoring contact between family members, family news must always originate at the point of crisis (the place of detention, refugee camp, etc.).
  - G. Handwritten or typed messages should not be accepted for delivery to addresses in inaccessible areas.
6. Message contents:
- A. Precautions must be taken to ensure that messages do not become a vector of further violence.
  - B. The contents of some messages should not be a pretext to block the transmission of all.
  - C. In certain circumstances, therefore, the contents of the messages may have to be checked. Any censorship, whether carried out by humanitarian organizations or by the authorities, must be limited to what is strictly necessary and not be arbitrary.
  - D. In certain contexts, people who provide their addresses could be endangered if the authorities censor the messages; in such cases, alternative measures, such as a c/o address, must be considered.
7. The Red Cross / Red Crescent family news network is essential and must be supported by all those involved as a priority. Other organizations and their means must be seen as being complementary to the network, not as substitutes for it.
- A. The ICRC must systematically assess the need for, set up and facilitate the development of the network.
  - B. The ICRC must coordinate the network whenever possible.
  - C. The ICRC must regularly evaluate the network's efficiency and quality.



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### Annex E: Checklist of what the means of identification provided to members of armed forces or armed groups must / should contain

1. All armed forces and armed groups must provide their members with means of identification that include:
  - A. personal records,
  - B. identity cards, and
  - C. identity discs, which constitute the absolute minimum.
2. **Personal records**
  - A. Central records are required to help identify captured, missing or dead members of the armed forces or armed groups.
  - B. The information contained in personal records should be duplicated in lesser detail at each lower level. For example, at squadron level there is no need to have information on enlistment, medical or dental records, level of education, etc.
  - C. At a minimum, the records must contain the following information:
    - a. surname and first names (or full name expressed in accordance with cultural norms);
    - b. sex;
    - c. date of birth;
    - d. rank;
    - e. serial or regimental number, or an equivalent unique identifier;
    - f. information on next-of-kin;
    - g. alternate next-of-kin (in the event that the primary next-of-kin cannot or should not be contacted).
  - D. It is advisable also to include special instructions for specific situations, for example:
    - a. if an injured soldier does not want his family to be notified to prevent unnecessary worry;
    - b. if the next-of-kin is elderly or emotionally fragile and is best notified of death or injury by another family member or a close friend.
3. **Identity cards** help to establish the status of persons who fall into the hands of the adverse party and the identity of those who have been severely wounded or killed in action.
  - A. At a minimum, the identity card must indicate:
    - a. the power of origin;
    - b. the surname and first names (or full name expressed in accordance with cultural norms);
    - c. the date of birth;
    - d. the blood group (as indicative information - any transfusion requires additional analyses);
    - e. the rank;
    - f. the serial or regimental number, or an equivalent unique identifier.
  - B. Optional data or information are:
    - a. sex;
    - b. place of birth;
    - c. physical data (height, weight, hair and eye colour, complexion);
    - d. mother's name;
    - e. father's name;
    - f. nationality;
    - g. religion (although often included to facilitate burial services in the deceased's religion, an indication of religion might be prejudicial to the person concerned, especially when religion is one of the underlying causes of the conflict);

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- h. signature;
  - i. fingerprints;
  - j. photograph;
  - k. expiry date.
4. **Identity discs** help to establish the status of persons who fall into the hands of the adverse party and the identity of those who have been severely wounded or killed in action.
- A. Identity discs are recognized as the only means of identification which is simple, secure and durable.
  - B. At a minimum, an identity disc must indicate, in the following recommended order:
    - a. the serial number or regimental number, or an equivalent unique identifier;
    - b. the surname and first names (or full name expressed in accordance with cultural norms);
    - c. the power of origin;
    - d. the date of birth;
    - e. the blood group (as indicative information - any transfusion requires additional analyses).
  - C. Religion is an option (although often included to facilitate burial services in the deceased's religion, an indication of religion might be prejudicial to the person concerned, especially when religion is one of the underlying causes of the conflict).
5. **Identity discs:** it is preferable for the inscription to be in the language of the issuing authority rather than in an international language.
6. **Identity discs** (format, material and production):
- A. must be on a chain or a strap to be worn around the neck;
  - B. should be no smaller than 4.5 cm by 4.5 cm;
  - C. should be constructed in such a manner that a portion can be detached, one part to remain with the body and the other part to be placed with personal belongings; the information on both parts of the disc must be identical. (The identity disc can also comprise two separate but identical discs, but such an arrangement produces noise, particularly when the discs are suspended on a metal chain. To reduce noise, the discs can be placed on a leather strap, the metal chain encased in a plastic tube, or the parts that produce noise taped together.);
  - D. should be made of lasting material that is able to withstand high temperatures and is non-oxidizing;
  - E. should have an indelible inscription that is not easily worn by constant use;
  - F. should be produced by a simple, hand-operated press that can be stored at command level, permitting rapid replacement in the event of loss or damage.
7. **Additional methods of identification:** use of a DNA bank for identification is still relatively expensive and beyond the resources of many arms carriers, particularly those in developing countries, where the need for a comprehensive and foolproof method of identification is greatest. In other countries, DNA analysis raises the issues of consent to take a DNA sample and subsequent protection of DNA data. DNA as a means of identification requires further technological development before it can be considered for widespread use.
8. **Distribution of identity discs and confirmation of proper use**
- A. Identity discs must be issued to and worn by the troops at all times, but especially before they are committed to combat or other hazardous operations.
  - B. Superiors must make frequent checks to ensure that the troops are wearing the discs.
  - C. To ensure distribution and proper use it is vital to:
    - a. convince the authorities to provide the discs;
    - b. promote the wearing of identity discs at all times;
    - c. provide the discs, especially to those destined for operations;
    - d. take steps, and if necessary disciplinary measures, to ensure their proper use.

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- D. The troops must be closely supervised to ensure that they do not remove the identity discs or other forms of identification from captured, wounded or dead members of the adverse party. Breaches must be subject to disciplinary measures.
- E. The ICRC should urge all parties to take the necessary steps to ensure that all armed forces and armed groups are provided with and wear identity discs.

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### **Annex F: Checklist of information to be collected on events, to be adapted to the context**

1. Date on which and place where the information or witness account (see **Annex H**, *Checklist for the collection of direct witness accounts*) was recorded.
2. A detailed description of the event and circumstances. This should:
  - A. not be just a list of facts, but rather an exhaustive description illustrating comprehension of the event;
  - B. make it possible to discern points requiring further investigation;
  - C. make it possible to assess the reliability of the testimony.
3. Alleged perpetrator(s).
4. Victims / casualties (persons affected, see **Annex G** below, *Checklist of additional information to be collected on persons, to be adapted to the context*).
5. The consequences in humanitarian terms and any needs observed.
6. Follow-up to be given and by whom.
7. Complete information (at least full name and address) on the source / direct witness (the source must always be known, even if it may not be revealed during any action taken subsequently).
8. A clear indication as to whether the information can be transmitted (with or without an indication of the source), and to whom (the authorities, the family of the person concerned, other humanitarian organizations).
9. Confirmation that the witness was informed that the ICRC will not transmit information to tribunals.
10. Name of the person who recorded the information.

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### Annex G: Checklist of additional information to be collected on persons, to be adapted to the context

1. **Ideally**, the following information should be collected on all individuals:
  - A. full name, expressed in accordance with cultural norms;
  - B. alias;
  - C. nicknames;
  - D. sex;
  - E. date of birth;
  - F. place of birth / origin;
  - G. full name of father, expressed in accordance with cultural norms;
  - H. full name of mother, expressed in accordance with cultural norms;
  - I. social security number (when relevant in the context);
  - J. ethnic origin / caste / tribe (when relevant in the context and not prejudicial);
  - K. religion (when relevant in the context and not prejudicial);
  - L. language;
  - M. present location, address;
  - N. power of origin, and, if different, the power on which the individuals depend and/or country of usual residence;
  - O. name and address of the person to be informed.
2. In addition, **depending on the specific situation of each person** concerned, the following **additional items are needed**:
  - A. for **persons whose identity is in doubt (small children, those who are severely ill or wounded, the handicapped, etc.)**:
    - a. a photograph;
    - b. a physical description;
    - c. any additional information that may help identify a person whose identity is in doubt;
  - B. for **members of the armed forces / armed groups**:
    - a. army, rank, regimental, personal or serial number;
  - C. for **(seriously) sick or wounded persons**:
    - a. state of health;
    - b. address to which correspondence can be sent;
  - D. for **civilians who have been / are going to be evacuated or transferred**:
    - a. present location / address;
    - b. future location / destination;
    - c. former (usual) residence;
    - d. specific reasons / criteria why they should be registered and followed up;
  - E. for **persons deprived of their liberty**:
    - a. date and place of capture / arrest;
    - b. place of detention;
    - c. information about any criminal proceedings;
    - d. information about any change of situation affecting them, such as transfers, evacuations, release, escape, recapture, repatriation, etc.;
    - e. marital status;
    - f. name and address of spouse;
    - g. address to which correspondence can be sent;
    - h. information as to whether the family has been informed and whether visits are allowed;
    - i. address before detention;
    - j. information on any visits by the ICRC or others;

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### F. for the dead:

- a. date and place of (capture and) death;
- b. particulars concerning wounds / illness and cause of death;
- c. date and place of burial, with particulars to identify the grave;
- d. in the case of members of the armed forces / armed groups, half of the identity disc (the other half to remain with the body);
- e. personal effects;
- f. in the case of unidentified human remains or remains whose identity is in doubt, any particulars that may help identify them, such as photographs, when possible fingerprints, body measurements, or a description of the teeth or special features the family can be expected to know about (see **Annex L**, *Checklist of the information to be collected on human remains*).

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### Annex H: Checklist for the collection of direct witness accounts

1. In principle, witnesses should be told exactly how the information they have provided will be used. As this is often impossible to do, they should be given a comprehensive explanation of how the concerned agency works and what it tries to achieve; they should be asked if the information they have provided is transmissible, and to whom (see also 4 below).
2. Identity of the person(s) concerned by the account - see **Annex G** above, *Checklist of additional information to be collected on persons, to be adapted to the context*:
  - A. If the witness account concerns identified individuals, the personal data of the person(s) concerned should be **sufficient to identify them beyond doubt**, and there should be no possibility of confusion with another person.
  - B. The account should include information about how the witness knows the identity of the person concerned and information that can be corroborated with data provided by the family.
  - C. In many if not most cases, eyewitnesses who are not close family members or friends will not be in a position to provide particulars such as date of birth, parent's names, or even the full name of the person concerned. They may, however, be able to provide other details which, when cross-checked against those provided by the family, can help to ascertain identity.
  - D. If the witness account concerns non-identified individuals, ask how many people were arrested, whether those deprived of their liberty were hidden and by whom, how many bodies were seen, whether in mass graves, etc.
3. Detailed information about the event itself: see **Annex F** above, *Checklist of information to be collected on events, to be adapted to the context*, and, regarding grave sites, see **Annex K**: *checklist for the management of sites containing human remains, including graves*.
4. If the witness account concerns **dead** identified individuals, consideration must also be given to the points below.
  - A. The information collected, if it is reliable, may be the only information transmitted to the family on the death of a relative.
  - B. The only prerequisite to mourning is the belief that the missing person is dead; credible information about the death of a relative is therefore essential to the mourning process, as it puts an end to the family's uncertainty and helps the family come to terms with its grief. As much information as possible should be collected, even if it can be transmitted only in part or orally.
  - C. In principle, depending on the context, information will be considered reliable and allow (the ICRC) to issue an attestation of death only if the following conditions are met:
    - a. the witness must be a direct witness of the death and/or burial;
    - b. the witness account must include information on how the witness knows the identity of the person concerned, so that that information can be corroborated with family members or friends;
    - c. the witness account must include the date and place of death and/or burial;
    - d. the witness account must include whether the witness knows if the family has been informed about the death, and if so, how; in either case, the account must be registered, as it may serve different purposes (*inter alia* to issue an attestation or to help locate the remains);
    - e. the witness agrees to have direct contact with the ICRC.
5. Identity of the witness: name and contact address, with a statement as to whether the witness agrees to release his/her identity (name and address) to the family / to the authorities / to the ICRC.
  - A. Witnesses must always be asked whether or not their names and addresses can be quoted / transmitted. They are asked to confirm their choice by placing their signature beside one of the two possibilities given on the form: transmission mentioning them as the source, or anonymous transmission.

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- B. If a witness refuses even the anonymous transmission of information, the interviewer should endeavour to understand why. If the witness fears for his/her safety or that of family members, other, informal ways of transmitting the information should be examined. The absence of a good reason, on the other hand, casts serious doubt on the reliability of the statement.
- C. If the witness agrees to the release of the information, he/she should be asked to write a message (for example, an RCM) that could be used to present the news to the family, if it is felt doing so may be beneficial to the family. The message is no substitute for direct contact and does not replace a death certificate or ICRC attestation. If the family's location is unknown at the time, the message should be kept in the CTA file until contact is established.
- D. Witnesses may write such messages without providing names and/or addresses: "I was in the same military unit / detained in the same cell as your brother X from ... to ....., and ....".
- E. Alternatively, witnesses can agree to be contacted by the family, or to contact the family on their own.



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### Annex I: Considerations on the meaning of death and recommendations for appropriate behaviour

*Excerpted from: "Mourning process & commemorations, Study - Report and recommendations, under the direction of Yvan Droz, doctor in ethnology, chargé de cours at Graduate Institute of Development Studies (IUED); with the collaboration of Sylvain Froidevaux, doctor in social sciences, under IUED mandate" (ICRC/TheMissing/10.2002/EN/7)*

#### 1. Recommendations

- Propose, do not impose help or assistance.
- Respect people's convictions and private sphere.
- Respect symbolic spaces (sacred or forbidden places).
- Between giver and recipient there is a relationship of power (domination by the former, dependency and submission for the latter).
- In all circumstances, stay calm.

#### 2. Facilitating the mourning process

- Because the mourning process is also a process of social reconstruction, humanitarian organizations must facilitate it by:
  - cooperating with all the forces within a given society;
  - supporting local associations, especially associations of wives or families of missing persons;
  - helping the families organize the funerals of next-of-kin and enabling them to grieve;
  - preventing psychological impediments to mourning that lead to despair, depression or withdrawal.

#### 3. The political authorities and the belligerents

- The political authorities and the belligerents must be required:
  - to guarantee that the civilian population can perform funeral rites in keeping with religious and personal convictions;
  - to acknowledge that the mutilation of human remains and failure to respect the dead is a grave matter;
  - to do everything in their power to find, identify and return to the families the remains of those killed in combat;
  - to recognize the specific rights of the families of missing persons and of the victims of unjust treatment.

#### 4. Humanitarian workers

- Expatriates have an ambiguous image:
  - on the one hand, they represent wealth, power, exploitation, arrogance;
  - on the other, they embody progress, human rights, humanitarian aid;
  - they are part of the stakes in local power struggles and may be used as instruments.
- The symbols of the ICRC:
  - the red cross and the red crescent also have strong religious connotations;
  - the red and white car is a symbol of life but also at times a harbinger of death.
- Foster dialogue, exchange, transparency, cooperation with the local population, the victims, the families and the associations that represent them.
- Acknowledge the limits to humanitarian action and reaffirm its values and principles (tolerance, openness, equality, justice, etc.).

#### 5. The representatives of what is sacred

- The role of those who represent what is sacred is to provide support to, stand by and counsel families in mourning.
- In some religions, the complexity or dangerous nature of funeral rites renders the presence of a religious official or someone conversant with those rites indispensable if they are to be performed properly.
- Sometimes, the clergy can be replaced by a laymen trained by the clergy or by a respected figure who has a sound knowledge of the prayers and sacred texts (Islam, Judaism).

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### 6. Funeral rites and the mourning process

- Ask for support and advice from village or religious officials (clerics, village chiefs, police officers, teachers) who are not stakeholders in the conflict.
- Listen to local employees (field officers, nurses), local groups (the local authorities, associations, radio stations, etc.) while remaining alert to the possibility of manipulation.
- Do not be too quick to close the files on missing persons the families still hope to locate: closing a file is tantamount to "killing" the missing relative.

### 7. The final moments

- Stay with the dying person during the final moments: dying alone is often considered the worst of fates.

### 8. Announcing death

- Avoid any appearance of casualness or flippancy when announcing a death.
- Avoid any sudden announcement that a loved one has died.
- Get in touch with the persons concerned discreetly and avoid the presence of onlookers or children when announcing the death.
- Avoid speaking first with the deceased's mother or wife; first contact a man in the family, a not-too-distant relative or a person that has the family's trust.
- Listen to the families, reply to their demands even if they seem incongruous.
- Take along a nurse or a psychologist able to cope with the crises and trauma brought on by the announcement of death.
- Ask the representatives of associations of the families of missing persons to be present when the announcement is made.
- Debrief humanitarian workers on the spot.

### 9. The funeral

- There are usually three parts to the funeral: removal of the body (from the home or from the morgue); the funeral service (at the church, mosque, etc.), and the burial or cremation (at the cemetery, the site of incineration).
- The procession for transporting the body to its final resting place (funeral procession) usually has a specific order that it would be unwise to change.
- The funeral is an opportunity to bid a final farewell to the deceased, to say prayers or sing sacred songs, to read an eulogy.
- During the funeral, people are sometimes publicly accused of having brought about the death (witchcraft).
- The dead person's name is emotionally and symbolically charged. In some places it must be spoken, in others it is forbidden to do so.

### 10. Graves and cemeteries

- Graves and cemeteries are often places of quiet contemplation for those in mourning.
- The grave can be an imposing and ornately decorated tomb, but the religious figures consulted recommend simplicity. In some religions, it is not necessary and may even be ill-advised to write the person's name on the grave. The grave must always, however, be clearly recognizable as such.
- Certain religions underscore the importance of denominational cemeteries.
- The grave must sometimes be oriented in a specific direction.
- Coffins are in some cases obligatory, but they are not systematically recommended; in the absence of a coffin, the corpse is wrapped in a white or beige cotton shroud.
- The fact that someone has been buried away from home or did not receive a decent funeral can be considered a curse.

### 11. Death in exceptional circumstances

- Death in exceptional circumstances (in an accident, by murder, drowning, poisoning, suicide, as a result of a curse) is often considered a bad omen and can be the subject of special rites (incantations, a request for mercy).
- Sensational declarations and allusions to the scandalous nature of the deceased's death or life are to be avoided.

### 12. The corpse and mutilations

- Respect the remains; they are part of the deceased person and as such are in some way sacred. To mutilate them is to desecrate them.
- Collect the parts of the body that make up the whole person. If the body has been seriously mutilated, call on a cleric to bear witness to the fact and perhaps to say a blessing or a prayer for mercy.
- The body is often laid out by specialists following specific requirements (concerning the products to be used, the number of ablutions, etc.).

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- In some religions, the body is displayed: it must be carefully prepared and dressed.
- The body must never be presented naked.
- If the corpse has been mutilated, the mutilations must so far as possible be hidden.

### 13. Missing persons

- As a rule, no funeral services are held for missing persons; at the family's request, however, a ceremony may be held or prayers said.
- In some cases, a funeral is held even if there is no body. In such cases, the deceased is represented symbolically.
- In most of the religions surveyed, ceremonies are held or prayers said to commemorate the missing person.
- In the absence of the body, the families can sometimes be convinced that death has occurred – and start the mourning process – by witness accounts or death certificates.
- The spouse's remarriage is in some cases governed by religious jurisprudence, but most religions apply the country's civil law.

### 14. Collective funerals

- Collective funerals must remain the exception rather than the rule.
- The rites and prayers are in principle the same as for individual funerals.
- Each deceased person should be mentioned by name and in a separate prayer.
- If possible, each body should be buried separately.

### 15. Anniversaries and memorial services

- All the religions surveyed for this report mark the anniversary of death, except Sunni Islam (Wahhabi).
- The phases in the first year of mourning are sometimes marked by memorial services.
- The cult of the dead or of ancestors can involve domestic or community rites and celebrations.
- Religious memorial services are sometimes combined with national holidays or ceremonies held in the memory of national heroes.

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### Annex J: Checklist of the information on the dead to be provided by the authorities

1. **At a minimum, the authorities must provide lists of (or individual notifications on) the people who have died under their authority, whether identified or not, of human remains and of the locations of graves, and death certificates.**
2. For each individual (whether or not the human remains are available), the information / objects provided must include:
  - A. in all cases:
    - a. full name (expressed in accordance with cultural norm),
    - b. sex,
    - c. date of birth (or approximate age);
  - B. when available:
    - a. place of birth / origin,
    - b. full name of father (expressed in accordance with cultural norm),
    - c. full name of mother (expressed in accordance with cultural norm),
    - d. place of residence,
    - e. name and address of next-of-kin to be informed;
  - C. if applicable:
    - a. military rank,
    - b. unit,
    - c. service number;
  - D. items added / omitted in the light of the cultural context;
  - E. particulars concerning wounds / illness and cause of death (depending on the situation – the political context, the relatives' safety, etc. - it may be impossible to obtain this information or inappropriate to transmit it);
  - F. the date and place of burial, with details for subsequent identification of the grave;
  - G. for members of armed forces / armed groups, half of the identity disc (the other half must remain with the body);
  - H. personal effects;
  - I. the date and place the certificate or list was issued, the official stamp of the issuing department, and the name of the official concerned (with title and signature).
3. If the identity of the remains is unknown or in doubt, the information must include:
  - A. any items that may help identify the remains, such as photographs, fingerprints when possible, body measurements, or a description of the teeth or other special features the family may be expected to know about (see also **Annex L**: *checklist of the information to be collected on human remains*, which can be submitted to the authorities for their use);
  - B. the points listed under **2.C** to **2.I** above.

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### Annex K: Checklist for the management of sites containing human remains, including graves

#### 1. Locating sites containing human remains, including graves

- A. An obvious part of ascertaining the fate of missing persons is locating the sites containing human remains, including graves. In that respect, the following points should be borne in mind:
- identified and/or unidentified remains may be found in marked graves at cemeteries, at memorials or in graves dug in the field during the hostilities;
  - witnesses and the local population are likely to have useful information;
  - the authorities may know more than anyone else about the location of graves and have a responsibility to disclose that information;
  - for unmarked graves, it may be necessary to employ forensic archaeologists who are experienced in recognizing gravesites by using probing techniques and sampling soil;
  - the number of bodies likely to be in the grave;
  - seasonal changes may make it more difficult to find graves (snow, differential growth rate of grass, etc.);
  - the number of bodies in a grave is frequently exaggerated.
- B. Gravesites can be located (and in some cases their presence confirmed using trained dogs) by remaining alert for:
- changes in vegetation;
  - protruding clothing or bones;
  - visual differences in the consistency or surface of the soil as a result of digging;
  - odour, if the grave is shallow;
  - changes in the soil structure as revealed by a metal probe (the tip of which may give off an odour of decomposition);
  - bullets, which a metal detector may find in or around the grave;
  - vehicle tracks, which can indicate the presence of a large mass grave.
- C. More sophisticated methods of locating graves include:
- aerial or satellite photography (**but** beware of the political implications);
  - ground penetrating radar; and
  - magnetometers (which operate through snow and water).

#### 2. Before any collection / exhumation process is started, the following information should be obtained on the gravesite:

- the name of the city / town / village and State in which it is located;
- its precise location (map references);
- a description of the location (e.g. at the local cemetery, at a factory, on barren land, in a cave or well, close to a military base);
- the features of the terrain (dry, wet, under water, covered with grass, bushes, trees, the existence of a rainy season);
- the type of site / grave: individual or multiple (more than one);
- the approximate dimensions of the site;
- the approximate depth of the grave;
- whenever possible, witness accounts of the burial (see **Annex H: Checklist for the collection of direct witness accounts**) specifying whether or not the witness:
  - participated in the burial;
  - was present when the bodies were deposited in the grave;
  - saw the grave after the bodies were buried;
  - was told that there were bodies buried in the grave;

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- I. particulars about the victims (official or obtained through witness accounts – see **Annex G**, *Checklist of additional information to be collected on persons, to be adapted to the context*), namely:
    - a. whether they died / were killed at or close to the gravesite, or in a different place and their bodies later deposited in the grave;
    - b. the alleged cause of death;
    - c. the number of victims (specifying whether the number is exact or approximate);
    - d. in some cases, to what political, social, religious or other group they belonged;
    - e. a list of the victims' names (specifying whether the names are exact or presumed);
  - J. the location of the relatives with, whenever possible, their names and addresses (for the collection of *ante mortem* data).
3. **Any site located that contains human remains must, as soon as possible, be protected and secured** from destruction and/or pillage by animals or people. This entails:
- A. establishing a security perimeter;
  - B. erecting a security fence;
  - C. addressing administrative matters, when necessary with the military or civil defence forces.

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### Annex L: Checklist of the information to be collected on human remains

1. This checklist should be used essentially:
  - A. by armed forces / armed groups and by military forces serving in peace-keeping and peace-enforcement units, in order to draw up SOP on the handling of human remains on the battlefield and provide training in relation thereto;
  - B. by personnel working in health facilities or for organizations (such as the ICRC, UNHCR, MSF or MDM) that may have to manage human remains that have not been returned to the families.
2. Material needed:
  - A. paper and pencil;
  - B. an ink pad (for fingerprinting);
  - C. plastic or metal markers;
  - D. plastic bags with labels (for belongings and samples);
  - E. surgical gloves or the equivalent thereof;
  - F. if permitted, a camera or video camera.
3. Before all else:
  - A. if the remains are still at the site of the incident, refer first to **Annex M: checklist on the immediate management of human remains (collection / transport)**;
  - B. if the remains need to be exhumed during an emergency, refer first to **Annex O: checklist on exhumation (e.g. from graves, wells, caves) in the absence of forensic specialists**;
  - C. record the date, the time that has elapsed since the incident, the kind of incident that led to the death of the person(s) concerned and the location of the remains;
  - D. if necessary and possible, record the number of bodies and describe the general state of all remains related to the same incident;
  - E. even though handling the bodies of those who died a traumatic death presents no increased risk of infectious disease, put on gloves, which should be routinely worn to protect against diseases such as HIV/AIDS or hepatitis B;
  - F. if no one has yet done so, give each body a **unique reference (number + place and date)**, record this **reference on a plastic or metal marker**, and **attach the marker to the corresponding body**;
  - G. if permitted, photograph the body and then photograph the face, making sure to include the marker featuring the reference number in the photograph (this can also be done with a video camera).
4. Open a file on each body / set of remains.
  - A. On a piece of paper bearing the body's unique reference:
    - a. note any obvious injuries and if possible photograph them (the photograph must include the body's unique reference);
    - b. note - but do not interpret - anything else, such as missing limbs, tied hands or obvious signs of mistreatment or mutilation;
    - c. note any other distinctive features that may help identify the body and are visible **without undressing the body or forcibly opening the mouth**. Refer to **Annex R: checklist for forensic work when only external examination is possible (5)**.
  - B. Whenever possible, take prints of all the fingers, starting with the left little finger.
  - C. Whenever possible, take a sample of hair including the roots (in case a DNA analysis is subsequently required) and put it in a plastic bag bearing the body's unique reference (to be kept in the file with the information noted under 4.A above).

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- D. For unidentified bodies:
- a. if permitted or allowed, photograph the face (the body's unique reference must be included in the photograph);
  - b. note the names of any people who died during the same incident (or in the same location, possibly on the same date) and whose bodies have been identified.
5. Check for personal effects, in particular for identity documents or discs, purses, jewellery, etc., and list them on the piece of paper bearing the body's unique reference.
  6. Collect all personal effects, group and number them by the body's unique reference **and store them separately in bags** labelled with the corresponding unique reference. When relevant, ensure that one half of any identity disc is included with the personal effects.
  7. These personal effects should be photographed. The photographs may be published in **books of belongings** that are subsequently circulated among the families of missing persons and feature pictures of clothes and other objects that relatives may recognize, thus facilitating the identification process.
  8. Ensure the remains are afforded adequate conditions of temporary storage or burial (see **Annex N** for temporary storage and **Annex P** for emergency or temporary burial of human remains).



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### Annex M: Checklist on the immediate management of human remains (collection / transport)

1. **Human remains that have not been buried** become increasingly difficult to collect and identify as time passes. Important points to remember are:
  - A. bodies decompose rapidly when exposed to a warm climate, humidity, rain, etc.;
  - B. animals may remove and scatter the remains;
  - C. bones may be removed;
  - D. decomposition, loss of bones and scattering increase with time;
  - E. heavy clothing will slow down the process of disarticulation;
  - F. climate and seasonal changes are important determinants of the ease with which surface remains are found.
2. This checklist should be used essentially:
  - A. by armed forces / armed groups and by military forces serving in peace-keeping and peace-enforcement units, in order to draw up SOP on the handling of human remains on the battlefield and provide training in relation thereto;
  - B. by personnel working in health facilities or for organizations (such as the ICRC, UNHCR, MSF or MDM) that may have to manage human remains that have not been returned to the families.
3. **Checklist**
  - A. Material needed:
    - a. paper and pencil;
    - b. an ink pad (for fingerprinting);
    - c. plastic or metal markers;
    - d. plastic bags with labels (for belongings);
    - e. surgical gloves or the equivalent thereof;
    - f. if permitted, a camera or video camera;
    - g. body bags or coffins (at a minimum, blankets or sheets).
  - B. **Do not:**
    - a. open graves without specialist expertise unless absolutely necessary; in such cases see **Annex O: checklist on the procedure for exhumation (e.g. from graves, wells, caves) in the absence of forensic specialists**;
    - b. destroy anything that could help identify the remains or establish the cause of death, e.g. remains, personal effects, clothes, etc.;
    - c. move the body without consulting **Annex L (checklist of the information to be collected on human remains)**;
    - d. remove remains from the site unless absolutely necessary;
    - e. separate personal effects from the remains without documenting and labelling them;
    - f. mix body parts or attribute body parts to incomplete remains;
    - g. mix personnel effects, clothes, etc.
  - C. **In all situations:**
    - a. ensure that the bodies are not situated in a mine field or booby-trapped;
    - b. record the date, the time that has elapsed since the incident, the kind of incident that led to the deaths of the people concerned and the location of the remains;
    - c. if possible, count (as opposed to estimate) the number of bodies and describe the general state of the remains;
    - d. if possible, photograph the whole scene;

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- e. even though handling the bodies of those who died a traumatic death presents no increased risk of infectious disease, wear gloves as a matter of routine in order to protect against diseases such as HIV/AIDS or hepatitis B;
  - f. give each body a **unique reference (number + place and date)**, record this reference on a plastic or metal marker and attach the marker to the corresponding body;
  - g. likewise number and label separate body parts;
  - h. note where each numbered body is situated in relation to the site, if possible using a map or chart;
  - i. note any indication of whether the remains are those of combatants or civilians;
  - j. think about informing the families concerned and the "host" community;
  - k. if the deaths are recent and depending on the context in which they occurred, consider ascertaining the total number of wounded by visiting hospitals or first aid posts;
  - l. bear in mind that people who have lost a limb in an explosion or as a result of a deliberate amputation may not be dead; rather, they may have survived and might be found in hospital;
  - m. survivors who are in hospital may have information that may help identify the dead.
- D. **If time permits, collect information on each body (part)** (see **Annex L: checklist of the information to be collected on human remains**). At a minimum:
- a. all remains should be marked with a **unique reference (number + place and date)**;
  - b. personal belongings should be collected, grouped and referenced by the body's unique reference, **stored separately in bags** labelled with the corresponding unique reference and kept dry. When relevant, the belongings should include half of any identity disc.
- E. If body bags or coffins are not available, wrap the remains in a blanket or sheet.
- F. **If the remains must be moved to a place of temporary storage in a vehicle:**
- a. place the remains in the vehicle with great care;
  - b. ensure that bodies and the corresponding personal belongings are transported in the same vehicle;
  - c. keep a copy of all records and notes;
  - d. ensure one record is kept and given to an appropriate authority or organization.
- G. **Temporary storage of remains if they are not to be buried immediately:** the ideal conditions for storing remains are listed in **Annex N: checklist on the management of human remains in a hospital mortuary (5.A)**.
- H. **Emergency or temporary burial of remains:** if the above conditions for temporary storage are not available, the only option may be emergency burial (see **Annex P: checklist on the emergency or temporary burial of human remains**).

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### Annex N: Checklist on the management of human remains in a hospital mortuary

1. Establishing or supporting hospitals or other equivalent health facilities may be part of the assistance provided by humanitarian organizations. In addition, in certain circumstances the ICRC or other international (governmental / non-governmental) organizations may run hospitals. Last but not least, armed forces / groups and military forces serving in peace-keeping and peace-enforcement units also run such medical facilities.
2. Setting up a mortuary is often given only belated consideration in hospital programmes. The mortuary of an existing hospital may afford inadequate security and have no staff or controls; it may be little more than a place where dead bodies are left until they are claimed by the families.
3. What happens to people and their bodies may be a politically sensitive issue. It is essential, therefore, that the bodies of those who die in hospital and of those who die elsewhere and are subsequently brought to the hospital be properly managed. Without a plan, bodies may be removed from the hospital and buried without being identified.
4. This checklist should be used essentially:
  - A. by armed forces / armed groups and by military forces serving in peace-keeping and peace-enforcement units, in order to draw up SOP on the handling of human remains in a (field) hospital mortuary and provide training in relation thereto;
  - B. by personnel working in health facilities or for organizations (such as the ICRC, UNHCR, MSF or MDM) that may have to manage human remains in a hospital mortuary that have not been returned to the families.
5. **Checklist for the management of a hospital mortuary**
  - A. Ideally, human remains should be stored:
    - a. in an area that is secure from entry at all times;
    - b. in an area hidden from public view;
    - c. at a temperature of 4°C;
    - d. in a dry atmosphere;
    - e. in an area that is large enough for working on and moving the remains and that is adequately lit;
    - f. where they can be viewed by the family in conditions that are as dignified as possible;
    - g. in a place providing easy access to vehicles for loading and unloading;
    - h. in a place that has easy access to where any later forensic work will be conducted;
    - i. in a room with a smooth, washable floor;
    - j. if many old remains are being identified and if necessary, near a separate area with a hose and cleaning / drying facilities for clothes and other personal effects.
  - B. It must be established as soon as possible who has authority to:
    - a. deliver bodies to and remove bodies from the mortuary;
    - b. enter the mortuary;
    - c. conduct examinations in the mortuary.
  - C. Local customs and regulations must be observed.
  - D. The mortuary must be locked and the key entrusted to the person in charge of the hospital's administration.
  - E. The mortuary must provide secure and appropriate conditions of temporary storage for dead bodies.
  - F. All bodies must be labelled with a **unique reference (number + date and place of death)** and, when identified, with the name.
  - G. Personal belongings must be collected, marked with the body's unique reference, grouped **and stored separately in bags** clearly labelled with the unique reference. Make sure the belongings include half of any identity disc.

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- H. A mortuary record must be kept comprising individual files classified by the body's unique reference. This record and the respective files should indicate or contain:
  - a. for all bodies:
    - I. the body's unique reference;
    - II. the likely cause of death, if obvious (e.g. head wounds);
    - III. any clothing or shoes;
    - IV. any personal effects (watch, jewellery, etc);
    - V. any identity document or disc;
  - b. for identified bodies, the full name and any particulars available (such as date of birth, father and/or mother's name, nationality, army, rank, regimental, personal or serial number);
  - c. for all identified and unidentified bodies not returned to the families, all the information listed in **Annex R** (*checklist for forensic work when only external examination is possible*);
  - d. the particulars of the person to whom the body was released, with the date.
- I. Should identified or unidentified bodies be buried by the hospital (and not returned to the families), refer to **Annex P**: *checklist on the emergency or temporary burial of human remains*.

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### Annex O: Checklist on the procedure for exhumation (e.g. from graves, wells, caves) in the absence of forensic specialists

1. The exhumation and recovery of bodies can be a highly sensitive political issue. Mishandling the remains can make a difficult situation worse.
2. In principle, the authorities should ensure that this task is performed by specialists.
3. Bodies should be exhumed in the absence of forensic specialists only when absolutely necessary (for example, when the exhumation is so urgent that there is no time to wait for specialist help to arrive.)
4. This checklist is therefore intended for the personnel of third parties, such as peace-enforcement units and humanitarian organizations, who are not forensic specialists and who must act in an emergency.
5. **Checklist**
  - A. **Before recovering buried or hidden human remains, non-specialists should:**
    - a. establish that it is impossible for the authorities concerned to do so;
    - b. ensure that all the authorities concerned know of their involvement in the recovery of human remains;
    - c. establish that the remains are going to be recovered anyway (for example, by the families, the local authorities, soldiers), possibly in an unskilful and undignified manner;
    - d. ensure that they are authorized to go where the remains are and benefit from adequate security guarantees;
    - e. check that the site is safe, e.g. that the bodies are not in a minefield or booby-trapped;
    - f. establish where the remains will go if they are removed (the hospital, the morgue, to the authorities or families) and ensure:
      - I. that the family is present to provide an appropriate burial / cremation;
      - or
      - II. that the conditions of storage are appropriate;
    - g. ensure that permission and the documents needed to transport remains (this is especially important if any borders or front lines have to be crossed) are obtained.
  - B. In addition, they should:
    - a. find out about:
      - I. the events leading to the people being killed and their bodies being put in the grave;
      - II. the likely location of graves;
      - III. the likely number of bodies in each grave;
      - IV. the likely time of death;
      - V. the likely location of any families that may be concerned;
    - b. draw up a strategy for informing the families and the community;
    - c. make sure logistic backup is available (human remains discovered in places such as latrines, caves, collapsed structures or bodies of water require special expertise and equipment and the adoption of specific safety measures);
    - d. make sure they have the right material and infrastructure (tools, tents, generators, etc.);
    - e. make sure they have the means to make the site secure;
    - f. provide for a secure storage area if no mortuary is available (see **Annex N: checklist on the management of human remains in a hospital mortuary, 5.A.**)
  - C. **Recovering buried or hidden human remains**
    - a. **The following measures must be taken:**
      - I. put up a fence or secure perimeter at the site;
      - II. employ a guard to be present at all times;
      - III. note if the ground has been disturbed since the burial by, for example, vehicles or previous attempts at recovery;
      - IV. photograph and document the ground or location of the remains;

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- V. remove the surface soil by horizontal layers using hands or a metal instrument (do not dig directly down into the grave);
  - VI. as soon as contact is made with any remains, remove all soil by horizontal scraping until the remains are completely exposed;
  - VII. even though handling the bodies of those who have died a traumatic death presents no increased risk of infectious disease, gloves should be worn routinely to protect against diseases such as HIV/AIDS and hepatitis B;
  - VIII. note the number of bodies and the general state of the remains;
  - IX. map and if permitted photograph any remains *in situ*;
  - X. give each body a **unique reference (number + place and date)**, record this reference on a plastic or metal marker and attach the marker to the corresponding body;
  - XI. if permitted, photograph any remains after they have been removed from the grave.
- b. **If the remains are immediately identified visually by the family and claimed, they should only be released to the family after a record has been made of the identification and the family has signed for the remains; this will allow** a death certificate or ICRC attestation to be issued at a later date, if necessary (see **Annex J: checklist of information on the dead to be provided by the authorities**).
- c. **If the remains are not immediately returned to the families and if time and conditions permit, collect information for each body (part)** (see **Annex L** for the *checklist of the information to be collected on human remains*, and **Annex R** for the *checklist for forensic work when only external examination is possible*). At a minimum:
- I. all remains should be marked with a **unique reference (number + place and date)**;
  - II. personal belongings should be collected, grouped and numbered with the unique reference **and stored separately in bags** labelled with the corresponding body's unique reference. When relevant, half of any identity disc should be included with the belongings.
- d. Remove the remains carefully.
- e. If body bags or coffins are not available, wrap the remains in a blanket or sheet.
- f. **If the remains must be moved to a place of temporary storage in a vehicle:**
- I. place the remains in the vehicle with great care;
  - II. ensure bodies and the corresponding personal belongings are transported in the same vehicle;
  - III. keep a copy of all records and notes;
  - IV. ensure one record is kept and given to an appropriate authority or organization.
- g. The ideal conditions for the **temporary storage of remains if they are not to be buried immediately** are listed in **Annex N: checklist on the management of human remains in a hospital mortuary (5.A)**.
- h. **After the human remains have been removed:**
- I. if permitted, photograph the site;
  - II. consider refilling the gravesite if necessary;
  - III. consider the emotional impact on those exhuming or working on the bodies, as they will not be familiar with this kind of work.

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### Annex P: Checklist on the emergency or temporary burial of human remains

1. **Human remains that have not been properly stored** become increasingly difficult to identify as time passes. Important points to remember are:
  - A. bodies decompose rapidly when exposed to a warm climate, humidity, rain, etc.;
  - B. animals may remove and scatter the remains;
  - C. bones may be removed;
  - D. decomposition, loss of bones and scattering increase with time;
  - E. heavy clothing will slow down the process of disarticulation;
  - F. climate and seasonal changes are important determinants of the ease with which surface remains are found.
2. If remains cannot be properly stored, they must be temporarily buried.
3. This checklist should be used essentially:
  - A. by armed forces / armed groups and by military forces serving in peace-keeping and peace-enforcement units, in order to draw up SOP on the handling of human remains on the battlefield and provide training in relation thereto;
  - B. by personnel working in health facilities or for organizations (such as the ICRC, UNHCR, MSF or MDM) that may have to manage human remains that have not been returned to the families.
4. **Checklist**
  - A. Material needed:
    - a. paper and pencil;
    - b. plastic or metal markers;
    - c. plastic bags with labels (for belongings);
    - d. surgical gloves or the equivalent thereof;
    - e. if permitted, a camera or video camera;
    - f. body bags or coffins (at a minimum, blankets or sheets);
    - g. shovels;
    - h. material to mark the graves.
  - B. **Human remains should undergo emergency or temporary burial only when the conditions for temporary storage as described in Annex N** (*checklist on the management of human remains in a hospital mortuary, 5.A*) are not available; this applies whether or not the bodies have been identified.
  - C. **The human remains should be temporarily buried once all the information required has been collected on them** (see *Annex L: checklist of the information to be collected on human remains*). At a minimum:
    - a. all remains should be marked with a **unique reference (number + place and date)**;
    - b. personal belongings should be collected, grouped and numbered with the unique reference **and stored separately in bags** labelled with the corresponding reference. When relevant, half of any identity disc should be included with the belongings.
  - D. **The temporary burial site should be selected according to the following criteria:**
    - a. it should be as close as possible to the place where death occurred, taking into account the points below;
    - b. there should be soil in which to bury the remains;
    - c. the soil should be well drained;
    - d. the site should be easily reached by vehicles;
    - e. the site should not be in a strategically or tactically significant area.

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### E. Each body should:

- a. be placed in an individual grave, if possible;
- b. be left clothed;
- c. be protected from water.

### F. Graves should be grouped according to nationality and/or religion (see also Annex I, *Considerations on the meaning of death and recommendations for appropriate behaviour*).

### G. Each grave should:

- a. be as deep as practicable or covered in a manner appropriate to the terrain, for example with a pile of stones;
- b. be clearly marked (to ensure that it can be found again) with an appropriate religious or cultural marker that:
  - I. is high enough to be seen;
  - II. is made of the most durable material possible;
  - III. indicates the unique reference and, for an identified body, the name (alternatively, this information can be written on a piece of paper that is sealed in a bottle or other waterproof container and left in the ground above the body);
- c. be clearly marked on a map, along with any other appropriate information;
- d. contain one half of the identity disc (if one is present), the other half to be included with the belongings;
- e. be treated with respect and in keeping with any known religious or cultural beliefs.

### H. Specifically for group graves:

- a. the bodies should be laid out in a recognizable sequence, preferably side by side;
- b. a marker must be used to indicate the beginning of the sequence;
- c. two lists should be prepared with the sequence of the bodies: one list should be left beneath the marker and the other kept with the record of the grave (see J below);
- d. a record should be kept of the number of bodies;
- e. a record should be kept of the names of people known to be in the grave but whose bodies are unidentifiable.

### I. A religious official may preside over the emergency burial of any remains, no matter what the religion or culture of the dead person. If no religious official is present, this function may be performed by another person. Any ceremony involving human remains must be dignified.

### J. The following information should be recorded for each grave, kept and transmitted whenever necessary to the ICRC:

- a. all information marked on the grave;
- b. any information pertaining to the person's identity;
- c. the exact location of the grave, marked on a map or with a precise grid reference;
- d. the appearance and nature of the material with which the grave is marked;
- e. the total number of graves in the same location;
- f. whether the grave contains only body parts;
- g. whether it is a group grave (if yes, there should be a list with the sequence of the bodies).

### K. The ICRC must forward information about graves and human remains to the competent authorities at the latest when plans are made for exhumation and identification and an adequate framework has been established for this.



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### Annex Q: Introduction to DNA

The identification of human remains involves complex scientific, technical, legal, ethical and cultural issues. In recent years, the possibilities for identification have been expanded, improved and rendered more complex by the emergence of technologies that permit analysis of DNA in remains and in people who may be relatives of missing persons. DNA analysis using certain techniques can apparently prove identity with nearly 100% certainty. DNA tests carry an equally important potential to exclude a family relationship.

1. Using DNA to identify remains is a **five-step process** that involves:
  - A. retrieving DNA from the remains;
  - B. retrieving DNA from likely relatives of the missing person **or** from the missing person's hair, saliva stains or unwashed underclothes;
  - C. profiling the DNA (by marker identification for nuclear DNA or by sequencing of sections in mitochondrial DNA - see below) from both sources;
  - D. matching the results of the profiling processes;
  - E. deciding on the degree of matching that is compatible with the claimed relationship between the person (the remains) and the presumed family member.
2. Two sorts of DNA are used for the purposes of identification.
  - A. **Nuclear DNA**
    - a. Nuclear DNA is relatively easy and fast to analyze. It is best extracted from blood, soft tissue or blood stains. It degrades in a few weeks if the remains are not carefully stored. Although it has proven difficult to extract suitable nuclear DNA from bones in the past, the technology involved has advanced rapidly.
    - b. The most accurate matching is done **either** when quality nuclear DNA can be harvested in respect of the missing person (from hair, saliva, etc.) **or** when both parents of the presumed missing person can give a blood sample. Nuclear DNA is much more difficult to use for matching with other relatives. Obviously, considerable complications arise when the presumed father is not the biological father.
    - c. For identification purposes, there are about 30 "loci" identified in human nuclear DNA, each of which has between 4 and 30 variables or "alleles". Each person's nuclear DNA is duplex and the alleles differ between each of the two chromosomes (one chromosome coming from the father and the other from the mother). There are thus many millions of possibilities; however, any variation in markers must be found in either the mother's or the father's nuclear DNA. There are a number of commercial kits for testing these markers.
  - B. **Mitochondrial DNA**
    - a. Analysis of mitochondrial DNA is slow, difficult and very expensive. The advantage is that it is easier to extract from bones and teeth and so can be used to test old remains.
    - b. Mitochondrial DNA is passed to a person only through the maternal line. This means a person's remains can be matched to the mother, maternal grandmother or maternal aunts or uncles, i.e. to more distant relatives. This also means that mitochondrial DNA is not unique to any one person. Furthermore, certain specific sequences of mitochondrial DNA may be shared to a greater or lesser extent with other, apparently unrelated people in the same population.
    - c. Mitochondrial DNA is difficult to analyse because the analysis is not performed by detecting markers with a kit but by sequencing the DNA base by base. Two sections of mitochondrial DNA are variable and it is these sections which are sequenced. The sequence of any one person's mitochondrial DNA is recorded in terms of how it differs from a reference sequence (the Anderson sequence).

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### 3. Software considerations

- A. In small numbers, the matching can be done on an individual basis, i.e., by directly viewing the results of the analysis.
- B. Interpol-DVI, the US Armed Forces DNA Identification Laboratory, the US Federal Bureau of Investigation, the Royal Canadian Mounted Police and the International Commission on Missing Persons have all reached different stages in developing software to match large numbers of samples.

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### Annex R: Checklist for forensic work when only external examination is possible

1. It may be necessary under difficult conditions, with little time and without access to mortuary facilities, to examine a number of bodies with a view to both identifying them and establishing the cause of death. In such cases, performing only an external examination would be compatible with professional conduct given the constraints.
  - A. Such situations are recognized in the introduction to the Model Protocol for Disinterment and Analysis of Skeletal Remains (Annex V to the UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions): "*Variation from this protocol may be inevitable or even preferable in some cases. It is suggested, however, that any major deviations, with supporting reasons, should be noted.*"
  - B. The objective of such an examination is to collect and preserve as much information as possible with a view to maximizing the chances of later identification.
2. Forensic pathologists are best qualified to perform such an abbreviated examination of recently dead bodies, while forensic anthropologists might be best equipped to so examine skeletal remains.
3. In such situations, the interaction between the community, the families, politicians, the military and the forensic specialist is likely to be tense and difficult.
4. For the purposes of maximizing the chances of later identification, each body must be labelled with a **unique reference (number + place and date)**. When only external examination is possible, the remains should be managed as specified in **Annex M** (*checklist on the immediate management of human remains (collection / transport)*) and **Annex L** (*checklist of the information to be collected on human remains*).
5. **External examination comprises at a minimum:**
  - A. an estimation of time since death;
  - B. photographs of the face and of the whole body (clothed and then without clothes); each photograph must include the unique reference (number + place and date);
  - C. registration and storage of all shoes, clothes and personal effects;
  - D. the recording of all signs of external injury;
  - E. the recording of:
    - a. sex;
    - b. approximate age;
    - c. height;
    - d. build (stocky, medium, fat, thin);
    - e. skin colour;
    - f. hair colour and style;
    - g. facial hair (beard, moustache);
    - h. eye colour;
    - i. ethnic appearance / likely ancestry;
    - j. clothing, shoes and/or uniform plus any numbers, insignia or signs of rank;
    - k. jewellery (watch, rings, etc.);
    - l. tattoos;
    - m. birthmarks;
    - n. scars (surgical or traumatic);
    - o. dental abnormalities that are easily visible, such as gold teeth or missing teeth;
    - p. unusually distributed hair;
    - q. nicotine staining of fingers;
    - r. condition of fingernails;
    - s. obvious deformities or malformations;
  - F. if appropriate, the taking of fingerprints;

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- G. an examination and if possible x-ray of any remaining teeth.
  - H. Material should be kept only for the purposes of identification or to establish the cause of death.
6. **Taking samples for subsequent DNA analysis** (see **Annex T**: *checklist on the technical aspects of collecting and storing DNA samples*)
- A. When only external examination is possible, it may be appropriate to take hair samples (including the roots) for subsequent DNA analysis.
  - B. If enough syringes and needles are available and the bodies have been dead for less than 48 hours, it may be more appropriate to take blood samples from major vessels.
  - C. **All samples must be clearly labelled with the body's unique reference.** Consideration must be given to how these samples are to be stored, registered and transported; all may be difficult given the constraints.
7. If the bodies are not claimed by the families or the competent authorities, they should be stored or temporarily buried as specified in **Annex N** (*checklist on the management of human remains in a hospital mortuary*) and **Annex P** (*checklist on the emergency or temporary burial of human remains*).

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### Annex S: Checklist of items to include when collecting *ante mortem* data

A comparison of four existing forms used by four different organizations to collect *ante mortem* data brought to light the need for a standard form, to be developed by a future working group.

The tables below comprise the items to be considered by the future working group, and can be used in the meantime as a basis on which to build forms until a standard form is adopted.

**Items of information in bold and italics** should be included in a software programme designed to match *ante* and *post mortem* data.

#### 1. The information that should be collected on *missing persons presumed dead*

##### Section 1

Personal data on the missing person - basic	Comment
1.1 Full name	
1.2 Alias	
1.3 Father's name	
1.4 Mother's name	
1.5 Marital status	
1.6 Name of spouse/fiancée	
1.7 If married, maiden name	
1.8 Sex	
1.9 Date of birth	
1.10 Age	
1.11 Place of birth	
1.12 District of birth	
1.13 Province of birth	
1.14 Country of birth	
<b>1.15 Ancestry (<i>Caucasoid, Mongoloid, Negroid</i>)</b>	
1.16 Nationality	
1.17 ID card number	
1.18 Religion	
1.19 Rank	
1.20 Military number	

##### Section 2

Personal data on the missing person - last known permanent address	Comment
2.1 Last known phone number	
2.2 Last known address	
2.3 Last known town/village	
2.4 Last known district	
2.5 Last known province	
2.6 Last known country	

##### Section 3

Personal data on the missing person - occupational status	Comment
3.1 Occupation	
3.2 Last known place of work (company)	
3.3 Town/village	
3.4 District	
3.5 Province	
3.6 Country	
3.7 Previous occupation	
3.8 Place of work (company)	

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Personal data on the missing person - occupational status	Comment
3.9 Town/village	
3.10 District	
3.11 Province	
3.12 Country	
3.13 Name of the school	
3.14 Town/village	
3.15 District	
3.16 Province	
3.17 Country	
3.18 Was the missing person affiliated to any organization? If yes, please provide the necessary details.	

### Section 4

Personal data on the missing person - photographs / documents	Comment
<b>4.1 Photographs: close-up photo of the person smiling, with mouth open AND closed, enclosed, obtainable</b>	
<b>4.2 Documents: official records, police records, medical records, hospital records, hospital x-rays, dental records, dental x-rays, dental surgery, other records.</b>	

### Section 5

Personal data on the missing person - blood relation	Comment
<b>5.1 DNA</b>	Question to be defined more clearly. Genealogical tree to be included.

### Section 6

Personal data on the missing person – fingerprints	Comment
<b>6.1 Has the person ever been fingerprinted?</b>	

### Section 7

Personal data on the missing person - physical description	Comment
<b>7.1 Height (date measured and how; reliability)</b>	
<b>7.2 Weight (date weighed and how; reliability)</b>	
<b>7.3 Build</b>	This question may have to be further broken down.
7.4 Is the person right-handed, left-handed or ambidextrous?	

### Section 8

Personal data on the missing person - hair	Comment
8.1 Baldness	
<b>8.2 Hair colour</b>	
<b>8.3 Type (natural, artificial, hairpiece)</b>	
<b>8.4 Shade (light, medium, dark, turning grey)</b>	
<b>8.5 Thickness</b>	
<b>8.6 Did the missing person have any grey hair?</b>	
<b>8.7 Did the missing person dye his/her hair?</b>	
<b>8.8 If yes, did he/she use colour or henna?</b>	
<b>8.9 Hair length</b>	
8.10 Style (straight, wavy, curly, parted)	

### Section 9

Personal data on the missing person - facial hair	Comment
9.1 Beard type	
9.2 Beard colour	
9.3 Moustache type	
9.4 Moustache colour	

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### Section 10

Personal data on the missing person - body hair	Comment
10.1 Hair on the chest (extent)	This section is too detailed.
10.2 Chest hair colour	
10.3 Hair on the back (extent)	
10.4 Back hair colour	
10.5 Pubic hair extent	
10.6 Pubic hair colour	

### Section 11

Personal data on the missing person - ears	Comment
11.1 Size	Too detailed. To be removed.
11.2 Angle	
11.3 Ear lobes	

### Section 12

Personal data on the missing person - mouth	Comment
12.1 Shape / other	Too detailed. To be removed.
12.2 Lips: shape / other	

### Section 13

Personal data on the missing person - forehead	Comment
13.1 Height / width / inclination	Too detailed. To be removed.

### Section 14

Personal data on the missing person - glasses	Comment
14.1 Did he/she wear glasses? <i>Always? y/n</i>	
14.2 Did a prescription exist? Is it available? enclosed?	
14.3 What were the glasses for ( <i>myopia, astigmatism, farsightedness</i> )?	
14.4 What did the glasses look like? Frame type	
14.5 What colour were the frames?	
14.6 Optometrist	
14.7 Did he/she wear contact lenses?	

### Section 15

Personal data on the missing person - eyes	Comment
15.1 Eye colour	
15.2 Shade, distance between eyes	Too detailed. To be removed.
15.3 Eyebrows: shape / thickness	

### Section 16

Personal data on the missing person - nose	Comment
16.1 Size / shape + peculiarities, curve/angle	

### Section 17

Personal data on the missing person - chin	Comment
17.1 Size / inclination + shape + peculiarities	

### Section 18

Personal data on the missing person - neck	Comment
18.1 Length / shape + peculiarities	

### Section 19

Personal data on the missing person - hands	Comment
19.1 Shape / size, nail length, peculiarities	

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### Section 20

Personal data on the missing person - feet	Comment
20.1 Shape / size, nail length, peculiarities	

### Section 21

Personal data on the missing person - skin traits	Comment
<b>21.1 Does the missing person have any tattoos or pierced body parts? If yes, please describe below:</b>	
<b>21.2 Does the missing person have any scars from injuries, surgery or burns? If yes, please describe below:</b>	
<b>21.3 Does the missing person have any other marks on his/her skin? If yes, please describe below:</b>	
<b>21.4 Circumcision</b>	

### Section 22

Personal data on the missing person - smoking habits	Comment
22.1 Did the missing person smoke? If yes, what (cigarettes, cigars, pipe)? Did he/she chew tobacco?	
22.2 Did he/she have a cigarette lighter? Please describe it.	
22.3 Do you remember the brand of the cigarettes? Please describe it.	
22.4 Did he/she use a cigarette holder? Please describe it.	

### Section 23

Personal data on the missing person - general medical history	Comment
<b>23.1 Has the missing person had any operations on the brain or head? When was the operation?</b>	
<b>23.2 Has the person ever had operations on any bones, including the jaw, spine or arms? If yes, what bone? What operation?</b>	
<b>23.3 Does he/she have any medical devices or implants in his/her body, such as: intrauterine contraceptive devices, pacemaker, screws, wires or artificial joints? If yes, name them.</b>	
<b>23.4 Has he/she ever had a broken bone? If yes, did he/she go to the doctor or hospital for the broken bone? Which bone was broken?</b>	
23.5 On which side of the body was the bone broken?	
23.6 Date the bone was broken.	
23.7 Was a splint or cast used?	
23.8 Where was he/she treated for this broken bone?	
<b>23.9 Does the person walk with a permanent limp? Give the reason for the limp.</b>	
23.10 Why does he/she have the limp? Was he/she born with the limp or did he/she acquire it?	
23.11 Does he/she have any deformity of the spine? If yes, please describe what the deformity looked like.	
23.12 Did he/she have any problems with/pain in the joints (shoulders, back, knees)? Where?	
<b>23.13 Does the missing person have any other special visible characteristics from childhood or adulthood, such as curvature of the spine, arthritis, a harelip or other deformities of the head, face, upper extremities, for example? Did the person acquire any deformity from this? What sort of deformity did the person have?</b>	



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### Section 24

Personal data on the missing person - amputation, missing body parts, devices	Comment
<b>24.1 Did the missing person have an amputated / a missing body limb? Which limb? Please provide more information.</b>	
<b>24.2 Has the limb been missing since birth?</b>	
24.3 Was it surgically removed?	
<b>24.4 Did he/she have any artificial limbs (arm or leg)? If yes, which limb?</b>	
24.5 Was the limb absent as a result of injury or accident at or near the time of disappearance/death?	
24.6 Did the person have any surgery to the head? If yes, what kind of surgery?	To be removed. Repetition with section 23.
24.7 Did he/she ever have a cyst on the head?	
24.8 Did the person use any medical devices (pacemaker for heart, valves in heart, rods in back, plates or screws)? If yes, which?	Another term should be found for "medical device". Might have to be removed. Repetition with first questions of section 24?
24.9 When was the device implanted?	Might have to be removed. Repetition with first questions of section 24?
	Should information be added on ear infection and craniotomy?

### Section 25

Personal data on the missing person - for a woman	Comment
<b>25.1 Was the missing person pregnant when she disappeared?</b>	Could go together with obstetric history in section 27.

### Section 26

Personal data on the missing person - medical records	Comment
<b>26.1 Did the missing person suffer from any medical condition that required medication or special medical equipment? Did he/she have problems such as arthritis, TB, severe heart disease, kidney dialysis, severe lung disease, asthma, skin condition?</b>	
<b>26.2 What medication might he/she have been carrying (asthma medication, inhaler, tubes of skin cream, syringe for insulin, bottles of pills)?</b>	
<b>26.3 Was he/she taking medication at the time of the disappearance/death? If yes, what medication was he/she taking?</b>	
26.4 What did he/she carry the medication in?	
26.5 Has he/she been in hospital?	
26.6 What was he/she treated for in the hospital?	
26.7 In which hospital and when?	
26.8 Did he/she have a physician?	
26.9 Do you know who operated on him/her?	
26.10 If yes, what is the name of the physician? Where is he/she working?	

### Section 27

Personal data on the missing person - medical records available	Comment
27.1 Medical records list: symptoms, findings, diagnoses, treatment, prescriptions, referrals to specialists, operations, scars, fractures, missing organs, hospitalization, etc.	
27.2 Regular use of tobacco, alcohol, medicine, narcotics, quat, betel nuts, etc.	
27.3 Infectious diseases: hepatitis, HIV / AIDS, tuberculosis, other	
27.4 If woman: abortions, births, hysterectomy	
27.5 Blood group	
27.6 Further medical information	
27.7 X-rays showing specific conditions	To be added: any x-ray available? at any age?
27.8 Organs removed	
27.9 Prostheses	

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Personal data on the missing person - medical records available	Comment
27.10 Other artificial aids	To be removed.

### Section 28

Personal data on the missing person - dental history	Comment
<b>28.1 Did the person have a dentist or go to a dental clinic?</b>	
28.2 Number and/or describe: fillings, extractions, crowns, silver teeth, gold teeth, black/brown teeth, broken teeth, decayed teeth, bridges, dentures.	
28.3 Did he/she suffer from toothaches?	
28.4 When he/she smiled, what did you notice about his/her teeth?	
<b>28.5 Was the person's jaw pushed out, pulled in or normally aligned?</b>	
28.6 Did he/she have overlapping teeth?	
<b>28.7 Did he/she have a gap between teeth?</b>	
<b>28.8 Is there any additional information you can give me about his/her teeth (rotation of teeth)?</b>	
28.9 Are you aware of the existence of any dental records?	
28.10 X-rays available or further material?	

### Section 29

Personal data on the missing person - clothes	Comment
<b>29.1 Clothing and shoes (carried on the person or in luggage). Hat, overcoat, scarf, gloves, coat, pullover, tie, shirt, waistcoat, vest, trousers, underpants, socks, dress, cardigan, blouse, skirt, petticoat, chemise, brassiere, panties, girdle, corset, stockings, tights, belt buckle, braces, other.</b>	

### Section 30

Personal data on the missing person - shoes	Comment
<b>30.1 What was his/her shoe size?</b>	
30.2 Shoes: type, light, heavy, boots, other / material, colour, design, label, size.	

### Section 31

Personal data on the missing person - personal effects	Comment
<b>31.1 Watch: always wore: y/n?</b> <i>Digital, analogue, other / material, colour, design, make, inscription.</i>	
<b>31.2 Jewellery: wedding ring, other rings, earrings, ear clips, neck chains, necklace, bracelets, other chains, pendant on chain, piercing trinkets, nose ring, anklet, other, etc.</b>	
31.3 Identity papers: passport, driver's license, credit cards, identity card, donor card, travelers' cheques, personal cheques, health card, other.	
31.4 What did he/she normally carry in the pockets? Keys, wallet, photos, gifts, pocket-knives, comb, rosary beads, purse, money belt, badges/keys, currency, other.	

### Section 32

Personal data on the missing person - information related directly to the moment of disappearance / death	Comment
32.1 When was the last time you saw the missing person? If not exact date, then record the time elapsed. Date last saw the missing person.	
32.2 Where did you last see the missing person? Explain the circumstances.	
32.3 Did another person see the missing person later? If yes, when and where was the last time the missing person was seen? If not exact date, then record the time elapsed. Please provide the source of the information and indicate if the source is a direct witness or providing second-hand information.	
32.4 Was the person in someone's custody the last time you saw him/her? If yes, in whose custody was he/she taken away?	

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Personal data on the missing person - information related directly to the moment of disappearance / death	Comment
32.5 Do you have any information on those persons?	
32.6 Was he/she with other people who are still missing? If yes, do you know the names?	
<b>32.7 Was the person wounded at the time of the disappearance/death? If yes, what was the date of injury?</b>	
32.8 What is the source of this information?	
<b>32.9 What caused the injury?</b>	
<b>32.10 What part of the body was wounded?</b>	
<b>32.11 Was he/she hospitalized before his/her disappearance/death? If yes, where?</b>	
32.12 Location where he/she was wounded/arrested?	
32.13 Do you know who was with him/her at the time? If yes, please give details.	
32.14 Have you ever heard from someone else that the missing person may have died?	
32.15 Do you know where they saw his/her body?	
32.16 Was there a witness who saw his/her body?	
32.17 When did the witness see his/her body? What is the witness's name + full address?	
32.18 Did the witness give written testimony about the circumstances of last sighting? If yes, where is that information?	
32.19 Have the person's remains been exhumed? If yes, were the remains given to you?	
32.20 If the answer to 32.19 is yes, where are the remains today (buried, placed in an ossuary or cemetery)?	
32.21 Is there any other information that you wish to add?	
32.22 Person to be contacted in case remains are positively identified (name, relationship, phone number, address).	

### Section 33

Personal data on the missing person – witnesses	Comment
33.1 What is the name of the person who last saw the missing person?	
33.2 Street	
33.3 Town/village	
33.4 District	
33.5 Province	
33.6 Country	
33.7 E-mail	
33.8 What is the witness's relationship to the missing person?	
33.9 Do you know a contact person for him/her?	

## 2. The information that should be noted on the persons interviewed

### Section 34

Personal data on the person interviewed	Comment
34.1 Full name	
34.2 Alias	
34.3 Father's name	
34.4 Mother's name	
34.5 Date of birth	
34.6 Sex	
34.7 Maiden name	
34.8 The missing person is my: (relationship)	

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Personal data on the person interviewed	Comment
34.9 Phone number	
34.10 Street	
34.11 Town/village	
34.12 District	
34.13 Province	
34.14 Country	
34.15 E-mail	
34.16 Date of interview	
34.17 Place of interview	
34.18 Interview conducted by	
34.19 Language of the interview	
34.20 Interview conducted with or without an interpreter	

### 3. The information that should be collected from other people

#### Section 35

Personal data on the missing person - witnesses/other sources of information	Comment
35.1 Full name	
35.2 Sex	
35.3 The missing person is his/her: (relationship)	
35.4 Phone number	
35.5 Street	
35.6 Town/village	
35.7 District	
35.8 Province	
35.9 Country	
35.10 E-mail	

#### Section 36

Personal data on the missing person - next-of-kin	Comment
36.1 Full name	
36.2 Sex	
36.3 The missing person is his/her: (relationship)	
36.4 Phone number	
36.5 Street	
36.6 Town/village	
36.7 District	
36.8 Province	
36.9 Country	
36.10 E-mail	

#### Section 37

Personal data on the missing person - for visual recognition	Comment
37.1 Full Name	
37.2 Sex	
37.3 The missing person is his/her: (relationship)	
37.4 Phone number	
37.5 Street	
37.6 Town/village	
37.7 District	
37.8 Province	
37.9 Country	

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Personal data on the missing person - for visual recognition	Comment
37.10 E-mail	

**Section 38**

Personal data on the missing person – doctor	Comment
38.1 Family doctor's name	
38.2 Phone number	
38.3 Street	
38.4 Town/village	
38.5 District	
38.6 Province	
38.7 Country	
38.8 E-mail	

**Section 39**

Personal data on the missing person - dentist	Comment
39.1 Family dentist's name	
39.2 Phone number	
39.3 Street	
39.4 Town/village	
39.5 District	
39.6 Province	
39.7 Country	
39.8 E-mail	

**Section 40**

Personal data on the missing person - closest maternal relatives	Comment
40.1 First name	
40.2 Last name	
40.3 Father's name	
40.4 Sex	
40.5 If a married woman: maiden name	
40.6 The missing person is his/her: (relationship)	
40.7 Street	
40.8 Town/village	
40.9 District	
40.10 Province	
40.11 Country	
40.12 E-mail	

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### Annex T: Checklist on the technical aspects of collecting and storing DNA samples

**\* = tasks that should be performed only by forensic specialists or health professionals**

1. Regarding human remains, the following samples can be collected for DNA analysis:
  - A. bone (preferably shaft of femur);\*
  - B. a tooth;\*
  - C. blood aspirated by syringes from major blood vessels;\*
  - D. hair pulled out by the roots;
  - E. any piece of tissue if fresh (less than 48 hours since death).
2. Regarding missing persons, the following can provide reference samples of DNA for the purpose of comparative analysis:
  - A. hairbrushes;
  - B. toothbrushes;
  - C. previous blood tests or tissue samples taken in hospital.
3. Regarding the reference population (the families), samples can be collected:
  - A. by pricking the finger and collecting drops of blood on absorbent paper (if the right kind of paper is not available, paper tissues, blotting paper or coffee filter paper can be used);\*
  - B. by vigorously rubbing the tip of a cotton swab on the inside of the cheek (buccal swab).
4. Storing samples
  - A. As a general principle, samples are best stored in plastic bags at around 4°C. This means it is best to use the refrigerator and not the freezer.
  - B. Blood samples collected on paper should be allowed to dry before they are stored. When dry, they do not necessarily have to be stored in a refrigerator, and their transport therefore does not require a cold chain.
  - C. Each sample must be carefully labelled with its origin, date of collection and unique reference (e.g. ICRC ID number).
  - D. Multiple samples must be numbered and stored in such a way that they can be easily located.

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### Annex U: Checklist for the collection of *ante mortem* data and of samples for DNA analysis

#### 1. Prerequisites

- A. The collection of *ante mortem* data and of samples for DNA analysis may not involve forensic specialists, but the data and samples collected will be of no value unless they can be compared to the findings of forensic specialists.
- B. In principle, therefore, before any *ante mortem* data or samples for DNA analysis are collected, a framework for the exhumation and identification process must be defined and agreed to by all those involved, in particular as concerns:
  - a. the legal rules governing the protection of personal data and human remains, which include the protection of *ante mortem* data and DNA samples and results (see **Annex C**, *Legal protection of personal data and human remains: commonly accepted principles*);
  - b. ownership and management of the *ante mortem* data and DNA samples and results.
- C. In principle, therefore, *ante mortem* data and DNA samples should not be collected outside the framework of a planned process to collect, exhume and identify remains:
  - a. the fact that *ante mortem* data and possibly DNA samples are being collected from a family suggests that the missing relative is dead and induces great hope that the remains will be found;
  - b. if no such data is being collected but there is a strong suspicion of death, the family's tracing request must be exhaustively completed as the recollection of important details fades with time (see **Annex V**, *Standard contents of a tracing file: checklist to be adapted to the context*).

#### 2. *Ante mortem* data and questionnaire

- A. At present, there is no standard AMD questionnaire that is applicable in contexts involving missing persons. As a follow up to *The Missing* project, a working group of forensic specialists with considerable field experience will meet in 2003 to prepare standard forms for collecting AMD and recording autopsy / *post mortem* data. These forms will then be translated into appropriate software to facilitate matching.
- B. In the meantime, whenever AMD is to be collected, all those concerned (including the forensic specialists in charge of the identification process) must agree on a standard questionnaire. **Annex S** (*Checklist of items to include when collecting ante mortem data*) provides a provisional *checklist of ante mortem data* that can be used as a model and adapted to the context.

#### 3. The collection of DNA samples

- A. DNA samples should be collected only if / when the conditions for the collection of AMD and DNA samples have been met (see 1 above).
- B. The fact that the identification process does not comprise DNA analysis does not mean samples should not be collected. Samples can be collected and stored. It may be possible or necessary to analyse them at a later date. Samples that are not analysed are covered by the same rules governing the legal protection of personal data and human remains as those that are. The decision to proceed will depend on whether or not the samples can be safely stored and catalogued, and whether there is a realistic possibility that the samples will be analysed in the future.
- C. All those involved should agree on how the samples are to be collected, stored and transported and on a chain of custody. Their number, including the number of laboratories, should be kept to a minimum.
- D. If there is no overall coordinating body responsible for taking and labelling the samples, how the samples are transported and stored should be defined in advance according to competencies and agreed in writing.
- E. For information on the **technical aspects of sample collection and management**, see **Annex T** (*checklist on the technical aspects of collecting and storing DNA samples*).

#### 4. Collecting AMD and DNA samples from the reference population

- A. The collection process must be prepared and coordinated with all those concerned.
- B. If the above prerequisites have been met and it is highly likely that the missing person or persons are dead, it may be appropriate to collect AMD and DNA samples when the tracing requests are first filed.

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- C. The staff (not necessarily health professionals) in charge of the collection process must be identified / selected.
  - a. They must be selected on the basis of:
    - I. how, where and when the data will be collected;
    - II. who the data are being collected by (what organization);
    - III. how they (and their organization) are perceived (e.g. impartial or not);
    - IV. whether interpreters are to be used in the interview;
    - V. the relationship between the interviewer and the interviewee;
    - VI. the experience, sensitivity and understanding of the interviewer.
  - b. The staff selected must be aware of the cultural, social, historical, political and security context.
  - c. The staff selected must be provided with the knowledge and skills required for the task and supported so as to avoid secondary trauma.
- D. In terms of organization, planning, workload and communication, the following considerations must be taken into account:
  - a. the need to double-check all information with different sources;
  - b. the time that has elapsed since the incident;
  - c. the cultural, social, historical, political and security contexts;
  - d. whether the interview is combined with a criminal investigation;
  - e. whether the interviewee is a family member, witness and/or perpetrator;
  - f. the fact that one interview may lead to other, new cases;
  - g. the sequence of events and the likely location of burial sites.
- E. Families and individuals must be systematically provided with psychological support as an integral part of the collection process, in order to help avoid retraumatization.
- F. In principle, the aim should be to conduct only one interview (albeit in several phases) with the family; multiple interviews and subsequent requests for further information (or DNA samples) can cause further trauma; if the conditions set out in 3 above have been met, samples could be taken at the same time as *ante mortem* data are collected.
- G. Whenever possible, the collection process should be organized to cover groups of people who disappeared in the same circumstances or during a specific event and whose remains may be expected to be found in the same location. This will make it easier to plan exhumations and should speed up the process of identification.
- H. All those involved must agree on and implement a communication strategy. The communities and families concerned must be provided with realistic information on the processes by which *ante mortem* data and DNA samples are collected and human remains collected, exhumed and identified.



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### Annex V: Standard contents of a tracing file: checklist to be adapted to the context

1. In order to obtain as many leads as possible to a person's whereabouts or fate (or, if all tracing efforts have failed, to provide a basis on which legal decisions can be taken with regard to the missing person), reliable information must be collected from all possible sources on **the individual and the events / circumstances** under which contact was lost / the person became unaccounted for.
2. Forms specifically designed for the context will make it easier to collect information systematically (see **Annex W: Standard tracing request form: checklist to be adapted to the context**).
3. **Contents of a tracing file**
  - A. To ensure proper follow-up, all items of information relating to one person must be placed in that person's individual file. The file may contain witness accounts, a duly completed tracing request form, letters from the family, press cuttings, photographs, returned mail, replies from the authorities, etc. It may also contain items of incomplete information that can be used to cross-check or corroborate other information.
  - B. The information to be collected can vary from one context to another. Generally speaking, a tracing file should include the elements listed below.
    - a. **Elements to identify the person being sought**
      - I. **Basic items needed:**
        - i. full name in the original language, as expressed locally;
        - ii. sex;
        - iii. date of birth (or age on a specific date);
        - iv. place of birth;
        - v. tribe, ethnic group, country of origin (when relevant in the context and not prejudicial);
        - vi. nationality;
        - vii. father's / mother's name in the original language, as expressed locally;
        - viii. spouse, children, siblings;
        - ix. religion (when relevant in the context and not prejudicial);
        - x. in the case of a combatant: rank, regimental, personal or serial number, power of origin;
        - xi. political affiliation (when relevant in the context and not prejudicial);
        - xii. last known address (and date on which it was valid);
        - xiii. occupation, place of employment;
        - xiv. a photograph;
        - xv. a description of the individual's physical appearance / characteristics, clothing, jewellery, other personal belongings the individual was carrying.
        - xvi. Some things may be added / omitted, depending on the specific needs in the context.
        - xvii. In very special cases, it might not be possible to obtain some of the personal data usually considered as essential for any action, e.g. to find relatives of small children and other persons unable to give their names or to express themselves clearly. In such cases, it will be necessary to record any other elements / particulars that may facilitate identification, such as physical description / characteristics, language (if any), etc.
      - II. **Ante mortem data**
        - i. In addition, *ante mortem* data and any samples for DNA analysis should be collected when the file is initially opened if plans have been made to collect, exhume and identify the remains, an adequate framework has been established for this and there is a strong presumption of death (see **Annex U: checklist for the collection of ante mortem data and of samples for DNA analysis**).
        - ii. If no such data is collected and there is a strong suspicion of death, the information collected when the tracing request is first made must be as complete as possible, as the recollection of important details fades with time.

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- iii. *Ante mortem* data should be collected by trained staff using a specific and detailed questionnaire (see **Annex U: checklist for the collection of ante mortem data and of samples for DNA analysis**).
- b. **Information on the circumstances of separation (loss of contact, disappearance) and leads to the person's present whereabouts or fate**
- I. The circumstances in which the disappearance occurred are crucial, as they make it possible to distinguish between loss of contact owing to displacement, detention, etc., and cases in which the person is probably dead. They also indicate the course of action to be taken in order to locate missing persons / ascertain their fate. Information on the disappearance should include:
    - i. a detailed description of the circumstances in which the separation / disappearance occurred, with date and place and the names of any persons / authorities involved;
    - ii. the names of those who were with the missing person at the time of the separation / disappearance, experienced the same event(s), and may have been with the person for some time after the disappearance;
    - iii. the most recent information on the missing person, the date on which it was valid, the kind of information it is, and where it was seen or heard;
    - iv. the names of other persons (and their contact addresses and relationship to the person being sought) who might be able to provide additional information, for example on people the missing persons may have contacted or on witnesses;
    - v. direct witness accounts of arrest and detention (and possibly the identity of the alleged detaining authority and/or place of detention);
    - vi. direct witness accounts of deaths or funerals;
    - vii. any document / "evidence" that may provide additional leads to be followed up.
  - II. A record must be kept of any action taken to locate the person / ascertain his/her fate, and any results / replies received.
  - III. In addition:
    - i. the date and location must be indicated for each event;
    - ii. for each item of information, the source, the date when it was collected and the person who collected it must be indicated;
    - iii. for each individual account or statement there must be a clear indication as to whether the source's name and the information are transmissible, taking into consideration the wishes and security of the person concerned (for witness accounts, see **Annex H**).
- c. **Information on the family / enquirer** must include:
- I. full name in the original language, as expressed locally;
  - II. relationship to the person being sought;
  - III. contact address;
  - IV. plans for the future / region of residence;
  - V. a statement as to whether the information may be made public (tracing through the media);
  - VI. if applicable, a statement as to whether the file may be handed over to the authorities, the National Red Cross or Red Crescent Society or another organization;
  - VII. a signature.
- d. **"Administrative" elements** comprise:
- I. a reference number;
  - II. the place and date where / when the information was obtained;
  - III. the name and organization of the person who received the request.
- C. Depending on the organization's framework and objectives and on needs, the initial file may be enhanced with additional sub-files containing, for example, medical information, witness statements, a description of the family's needs or judicial records.

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- D. An individual file may contain much more information than that which is eventually transmitted to the authorities or to another organization.
- E. Whether or not the identity of any witnesses is transmitted depends on their wishes and the security situation.
- F. Witness accounts and other documents may have to be reworded before they are transmitted to the authorities.

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### Annex W: Standard tracing request form: checklist to be adapted to the context

1. Forms specifically designed for the context will make it easier systematically to collect and transmit information. They help to ensure that no essential item is forgotten and to summarize a case for processing / submission. The table below should be used as a basic checklist when designing forms for specific contexts.
2. Once a form has been designed for a specific context, each item of information on it is mandatory, if applicable.
3. The criteria for accepting tracing requests must be defined in each context.
4. In addition, *ante mortem* data and possibly samples for DNA analysis should be collected from the family if:
  - A. plans have been made to collect, exhume and identify remains and an adequate framework has been established (see **Annex U: checklist for the collection of ante mortem data and of samples for DNA analysis**), and
  - B. there is a strong presumption of death.
5. If no such data are collected and there is a strong suspicion of death, the information placed in the tracing file must be as complete as possible, as the recollection of important details fades with time.
6. Names must always be written in the original language and as expressed locally. A transliteration into the Latin alphabet must be added, if applicable, using a dictionary drawn up for the context.
7. What constitutes a complete address depends on the geopolitical structure of each country; each item in the address has to be defined accordingly. In some contexts, the address may have to be descriptive only.

0. REFERENCE NUMBERS
ICRC NO.
OTHER REFERENCE NOS.
OFFICIAL REQUEST NO.

1. PERSON TO BE TRACED
FULL NAME (AS EXPRESSED LOCALLY)
ALSO KNOWN AS
FATHER'S FULL NAME (AS EXPRESSED LOCALLY)
MOTHER'S FULL NAME (AS EXPRESSED LOCALLY)
DATE OF BIRTH (OR APPROXIMATE AGE ON A GIVEN DATE)
PLACE OF BIRTH
SEX: M/F
PHOTOGRAPH
NATIONALITY
TRIBE / ETHNIC GROUP / COUNTRY OF ORIGIN
RELIGION
OCCUPATION
MARITAL STATUS
WIFE'S OR HUSBAND'S FULL NAME (INCL. WIFE'S MAIDEN NAME IF APPLICABLE)
LAST KNOWN ADDRESS + DATE
TELEPHONE, FAX, E-MAIL, etc.
<b>For military personnel/combatants:</b>
RANK
REGIMENT
PERSONAL OR SERIAL NUMBER
POWER OF ORIGIN

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<b>2. DETAILS ON THE ENQUIRY</b>
This part of the form is used to summarize the <u>circumstances of separation / disappearance</u> and to provide <u>leads</u> to the person's location or fate. Statements collected from witnesses can be transcribed on this part of the form.
DATE AND DETAILS OF LAST NEWS/OF DISAPPEARANCE/ARREST, AND SOURCE OF INFORMATION
OTHER PERSONS WHO WERE ARRESTED/DISAPPEARED TOGETHER WITH THE PERSON BEING SOUGHT
LAST ALLEGED PLACE OF DETENTION, DATE AND SOURCE OF THE INFORMATION
AUTHORITY WHICH MAY BE ABLE TO SUPPLY INFORMATION ON DISAPPEARANCE/ARREST
ANY STEPS TAKEN BY THE FAMILY TO LOCATE THE PERSON, AND RESULTS
RED CROSS MESSAGE (RCM) SENT TO THE PERSON BEING SOUGHT: YES/NO
INFORMATION PROVIDED BY "BACK TO SENDER" RCM
OTHER INFORMATION (PLEASE GIVE ALL ADDITIONAL INFORMATION THAT MAY FURTHER THE ENQUIRY: PREVIOUS ADDRESSES AND LENGTH/DATES OF STAY, BUSINESS ADDRESS OR THAT OF PRESENT/LAST EMPLOYER, ETC.)
NAMES AND ADDRESSES OF OTHER PERSONS WHO MAY BE ABLE TO SUPPLY INFORMATION (OTHER LAST DIRECT WITNESSES, FAMILY, FRIENDS, CONTACTS, ETC.)

<b>2.a. FAMILY MEMBERS ACCOMPANYING THE PERSON TO BE TRACED</b>
These are people who are presumed to have gone through the same events as the person being traced. They may also be or become the subjects of tracing forms.
FULL NAME (AS EXPRESSED LOCALLY)
DATE OF BIRTH (OR APPROXIMATE AGE ON A GIVEN DATE)
SEX: M/F
RELATIONSHIP WITH THE PERSON TO BE TRACED

<b>3. ENQUIRER</b>
FULL NAME (AS EXPRESSED LOCALLY)
ALSO KNOWN AS
FATHER'S FULL NAME (AS EXPRESSED LOCALLY)
MOTHER'S FULL NAME (AS EXPRESSED LOCALLY)
DATE OF BIRTH (OR APPROXIMATE AGE ON A GIVEN DATE)
PLACE OF BIRTH
SEX: M/F
DETAILED CONTACT ADDRESS
TELEPHONE, FAX, E-MAIL, etc.
PREVIOUS ADDRESS (May be useful if the enquirer has moved/been displaced since he/she last had contact with the missing person)
THE PERSON TO BE TRACED IS MY: (specify father, mother, husband, child, etc.)

<b>3.a. OTHER PERSONS LIVING WITH THE ENQUIRER</b>
The identities of other relatives living with the enquirer may be useful: <ul style="list-style-type: none"><li>to match requests if the families were split and no recent addresses are available (it cannot be anticipated which member of the family may submit a request);</li><li>as additional elements to identify the enquirer.</li></ul>
FULL NAME (AS EXPRESSED LOCALLY)
DATE OF BIRTH (OR APPROXIMATE AGE ON A GIVEN DATE)
SEX: M/F
RELATIONSHIP WITH THE ENQUIRER

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<b>4. INFORMATION REGARDING THE HANDLING OF THE ENQUIRY</b>
PUBLIC MEDIA MAY BE USED FOR THIS ENQUIRY, WITH MENTION OF MY NAME / THE NAME OF MY RELATIVE(S): Y/N
I, THE UNDERSIGNED, AGREE TO THIS ENQUIRY BEING TRANSMITTED WITH/WITHOUT MY NAME/ADDRESS TO THE AUTHORITIES CONCERNED
PLACE OF ENQUIRY
DATE OF ENQUIRY
ENQUIRER'S SIGNATURE
For requests transmitted by the authorities on behalf of the family
REQUEST FILED ON:
BY: (AUTHENTICATED WITH NAME/TITLE/SIGNATURE AND STAMP)
TRACING REQUEST HANDED OVER BY ... TO ... ON ..... IN....

<b>5. INFORMATION FROM WITNESSES TO THE DISAPPEARANCE / ARREST / DETENTION / DEATH</b>
Witness accounts should be noted on separate forms. Items of information the witness agreed to transmit should be transcribed on tracing request forms.
FULL NAME OF WITNESS
ADDRESS
PLACE AND DATE WHERE/WHEN TESTIMONY WAS TAKEN
PERSON WHO TOOK THE TESTIMONY (NAME, FUNCTION, ORGANIZATION)
IDENTITY OF THE PERSON CONCERNED BY THE TESTIMONY (PERSON TO BE TRACED)
WHERE THE PERSON WAS LAST SEEN, WHEN AND IN WHAT CIRCUMSTANCES
ANY OTHER INFORMATION THAT MIGHT BE HELPFUL
HOW THE WITNESS KNOWS THE IDENTITY OF THE PERSON CONCERNED
I AGREE THAT MY TESTIMONY MAY BE TRANSMITTED TO THE FAMILY, WITH / WITHOUT MY NAME / ADDRESS + SIGNATURE OF WITNESS
I AGREE THAT THIS INFORMATION MAY BE TRANSMITTED TO THE AUTHORITIES WITH / WITHOUT MY NAME / ADDRESS + SIGNATURE OF WITNESS

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### Annex X: The ICRC's position on the centralization and sharing of data

1. Under the mandate conferred on the ICRC in the 1949 Geneva Conventions and their Additional Protocols of 1977, as confirmed and supplemented in resolutions adopted by International Conferences of the Red Cross / Red Crescent and the Statutes of the International Red Cross and Red Crescent Movement and of the ICRC, it is the responsibility of the ICRC and its Central Tracing Agency to:
  - A. collect, record, centralize and forward information on the victims of armed conflict and internal violence;
  - B. collect and forward family news;
  - C. trace missing persons;
  - D. facilitate and organize family reunifications, transfers and repatriations;
  - E. coordinate the activities of the International Red Cross and Red Crescent Movement in those fields;
  - F. archive information on the victims of armed conflict or internal violence in the long term in order to be accountable to the victims and their relatives.
2. In accordance with its mandate, the ICRC stands ready to receive / centralize from those present in the field any information that can help to prevent persons from becoming unaccounted for, restore family contacts and trace missing persons, provided that:
  - A. there is agreement on the type and quality of information needed in order to follow up on a case;
  - B. the information received is of the type and quality agreed on.
3. In such cases, within the framework of its operations and possibilities:
  - A. the ICRC is ready to take action, namely:
    - a. to raise the matter with the authorities in bilateral confidential discussions;
    - b. to follow up cases of missing persons with a view to ascertaining their fate;
    - c. to transmit the information available and any replies to the families;
    - d. to take any other appropriate action to protect and assist the persons affected;
  - B. on request, the ICRC is ready to inform whoever provided the information about the follow-up given, as long as agreements on confidentiality and the legal rules governing the protection of personal data are respected.
4. When it comes to sharing information, the ICRC recalls that, in order to implement its mandate in accordance with its principles of neutrality, impartiality and independence, it maintains a confidential dialogue with the authorities. This dialogue is essential if the organization is to obtain access to all the victims of a situation, to improve their plight and to collect information on their behalf. Therefore, information obtained in the course of the confidential dialogue between the ICRC and the authorities cannot be shared.
5. Notwithstanding 4 above, the ICRC is nevertheless willing:
  - A. to share general information on contexts, humanitarian activities and security issues;
  - B. to share personal data under the following conditions:
    - a. doing so serves a strictly humanitarian purpose, namely the interests of the persons concerned;
    - b. the rules governing the protection of personal data are respected by those concerned; and
    - c. the persons concerned have given their consent or it is in their best interests that the data be shared.
6. The ICRC prefers those concerned to conclude formal agreements for the exchange of information relating to personal data on the basis of specific needs.

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### Annex Y: About truth commissions and national human rights committees

#### Truth commissions

*Excerpted from "The Missing: Truth Commissions as mechanisms to solve issues on people unaccounted for", Synthesis document commissioned by the ICRC and prepared by Natacha Binsse-Masse and Marco Sassòli, respectively research assistant and professor at the Faculty of Political Science and Law of the University of Quebec in Montreal, Quebec, Canada, based on publicly available information. (ICRC/TheMissing/12.2002/EN/6)*

#### Executive Summary and recommendations

Truth commissions are generally created by governments for a limited period of time, to establish the truth on past events presumed to constitute serious human rights violations and thus to further reconciliation in the country. In the past, some truth commissions had to deal with the problem of missing persons. Their practices show that truth commissions could effectively tackle some issues on persons unaccounted for, if some conditions for an efficient functioning were met. These conditions, which can differ from a country to another, are in fact rarely respected sufficiently to accomplish adequately this specific task.

Truth commissions are mainly interested in persons unaccounted for in order to find out whether they were victims of forced disappearances. They generally search for the truth about a pattern of behaviour, often also illustrated by the violations committed against some individuals, rarely about all individual violations. The focus is generally put on finding violations and on attributing them to the State. Sometimes, the responsibility is also individually attributed. To find the current truth, i.e. to locate a disappeared person or his or her remains, is only a by-product of the search for the truth about the past.

If the basic needs for an efficient work of a commission are not met, the commission will inevitably have a lesser impact on the problem of missing persons. Most of the following tentative recommendations therefore concern as much the functioning of truth commissions in general as specifically the appropriate way to clarify the fate of persons unaccounted for:

#### 1. Credibility and report of the commission

- Take all the appropriate measures to assure the credibility of the commission (composition, way of functioning, etc.)
- Publish the report in a way that allows most of the population to know its contents (in different languages, by radio or television, on internet, etc.).

#### 2. Access to and collection of information

- Take all appropriate measures to facilitate testimonies by witnesses, relatives and perpetrators, including through visits to rural areas, offering services in different languages, creating a climate of trust;
- Have access to documents or locations placed under the authority of the government;
- Have judicial powers (subpoena, search and seizure);
- Gain the trust of government officials for the utility and impartiality of the work of the commission;
- Offer efficient and credible witness protection programmes;
- If an amnesty is to be declared it should be conditional on revealing the truth about violations committed;
- Qualify hiding pertinent information concerning missing persons as a crime;
- Whenever a perpetrator or a witness reveals a death, ask for information about the current location of human remains.

#### 3. Financial and human resources

- Provide the commission with resources and staff to make individual investigations;
- Provide the commission with sufficient resources and staff to exhume and identify corpses (traditional techniques, DNA, etc.);



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- Provide the commission with financial resources to assure the independence and continual functioning of the commission.
- Donor countries and international financial institutions should consider supporting truth commissions in developing countries financially and by setting up fora where the latter can exchange experience, including on methods to search for persons unaccounted for;

### 4. Search for persons unaccounted for and their remains

#### a) Necessity to investigate the fate of individual victims?

We do not think that we must generally recommend that all truth commissions should always also search individually for every person unaccounted for and for the relevant human remains. This could hinder a commission to achieve its other aims, in particular to clarify the historical truth and to provide official recognition for the suffering of the victims of human rights violations. Where the number of persons reported missing is large, in particular after an armed conflict, a focus on clarifying the individual fate of every missing person can paralyse a truth commission. In our view, a truth commission can legitimately choose to clarify only the general picture of human rights abuses and violations of international humanitarian law. If it chooses to do so, it should however:

- Inform the families and witnesses testifying about disappearances that it will not try to clarify the fate of individual persons;
- In case it nevertheless encounters during its work information which assists in clarifying the fate of individual persons, provide such information to the families concerned or to another body competent and willing to clarify individual fates;
- Include into its report as many details as possible permitting families of missing persons to understand whether their relative must be presumed to be dead and about the probable fate of each category of missing persons;
- Include into its report the names of all persons reported as missing.

#### b) Possibility to investigate some individual representative cases

Although such action has discriminatory effects and leaves many families frustrated, we are not in a position to recommend that truth commissions should never choose only to clarify the fate of some representative individuals who disappeared. This should however be done in full transparency towards the families and only to illustrate general phenomena. In addition, concerning those persons whose fate they try to clarify, the recommendations applicable to commissions which deal with individual cases apply.

#### c) In case the fate of individual missing persons is investigated

If a commission chooses to clarify the fate of individual missing persons, it should:

- Inform the families and witnesses testifying about disappearances about its working methods and chances of success;
- Inform families individually and before the report is published on its findings concerning their individual relative;
- Search whenever it clarifies the fate of an individual for the next of kin of that individual
- Confronted to insufficient resources, give priority to clarify the fate of the individuals concerned and search for remains only where that is necessary for that purpose.

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### National human rights commissions

**Extract of "The Missing: National Human Rights Commissions as mechanisms to solve issues on people unaccounted for", *Synthesis document commissioned by the ICRC and prepared by Natacha Binsse-Masse and Marco Sassòli, respectively research assistant and professor at the Faculty of Political Science and Law of the University of Quebec in Montreal, Quebec, Canada, based on publicly available information.* (ICRC/TheMissing/12.2002/EN/6)**

#### Executive Summary and recommendations

National human rights commissions (NHR commissions) are usually set up by the executive or legislative branch of government to promote and protect human rights at the national level. Their mandate therefore only covers disappearances provoked by human rights violations, in particular forced disappearances, except if the uncertainty of the family about the fate of their missing relative is perceived as a violation of their human rights. They have many common characteristics and some international guidelines have been set up to help countries interested in establishing them. NHR commissions are mandated to prevent human rights violations and to assess the respect of human rights. Frequently, they investigate individual complaints about human rights violations. Such enquiries clarify sometimes what has happened to a missing person. Most often, NHR commissions appear to play a rather indirect role in solving issues on persons unaccounted for, by preventing the human rights violations which frequently cause disappearances and by obliging government authorities to proceed to further investigations or to provide information to the families and by turning evidence over to the competent authorities.

The direct and indirect efficiency of a NHR commission in solving issues on persons unaccounted for depends upon the will of the authorities to respect human rights and upon the same factors which contribute to the commission's general impact on the human rights situation in the country. The following tentative recommendations can be made:

#### 1. Mandate

- Formulate or understand the mandate in a way that does not exclude cases of disappearances.
- Include into the mandate the right of the family to know the fate of their next of kin and not only the rights of the missing person.

#### 2. Functioning and powers

- Include rules preventing disappearances and dealing with their consequences into the legislative proposals and education programmes, in particular those directed at law enforcement officials;
- Offer the possibility to file a complaint on the behalf of someone else;
- Have access to documents or locations under the authority of the government and in particular the security forces;
- Have judicial powers (subpoena, search and seizure);
- Offer efficient and credible witness protection programmes;
- When the disappearance of a person is found to be a human rights violation, the Commission should either investigate the fate and whereabouts of the person or of his or her human remains or have sufficient powers to ensure that further investigations are undertaken by other authorities and that their result is transmitted to the commission and to the families concerned.

#### 3. Financial and human resources

- Ensure the availability of financial resources necessary to assure the independence and continual functioning of the commission;
- Donor countries and international financial institutions should consider supporting NHR commissions in developing countries financially and by setting up fora where the latter can exchange experience, including on methods to search for persons unaccounted for;
- Ensure that the commission has either sufficient resources and staff to make individual investigations and accomplish the necessary tasks to clarify someone's fate (e.g., exhumations, forensic and DNA tests, etc.), or sufficient authority to ensure that further investigations are undertaken by other authorities and that their result is transmitted to the commission and to the families concerned.

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### 4. Independence, transparency and credibility of the commission

- Take all the appropriate measures to ensure the credibility of the commission (composition, way of functioning, etc.);
- Publish reports in a way that allows most of the population to know their contents (in different languages, by radio or television, on internet, etc.);
- Gain the trust of government officials for the utility and impartiality of the work of the commission.