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Missing persons from Europe's conflicts: the long road to finding humanitarian answers

Report¹

Committee on Migration, Refugees and Displaced Persons

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Summary

There are around 20 000 missing persons in Europe following a number of armed conflicts over recent decades. This problem is still a major issue for many European States, where reconciliation between former conflicting parties is hampered by the delay in investigating the fate of thousands of missing persons.

This report provides an overview of the present situation of missing persons and points out the principle reasons for Europe's failure to find a solution to this problem.

The families of missing persons should be placed at the centre of all actions taken by governments, and approaches and initiatives should be developed to ensure that they receive proper care and support. Furthermore, as highlighted by the European Court of Human Rights, families have the right to know what has happened to their loved ones.

There is a strong need for European governments to speed up the process of the exhumation and identification of the remains of missing persons, and to bring the truth of their fate to family and friends. The non-resolution of this problem is a potential danger for European security.

1. Reference to committee: [Doc. 12635](#), Reference 3786 of 24 June 2011.



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A. Draft resolution²

1. Solving the problem of missing persons following armed conflicts in Europe is vital for establishing reconciliation between warring factions and ensuring peace on the European continent.
2. There are still more than 20 000 missing persons following conflicts in Cyprus, the Balkans and the North and South Caucasus.
3. Two of the main reasons why the problem of missing persons has not yet been solved are lack of political will and individuals' fear of reprisals. To these problems can be added the limited national capacity in many countries and the lack of qualified forensic experts, as well as the budgetary constraints which in the present economic crisis affect the process of recovery and identification of missing persons.
4. The Parliamentary Assembly reminds the member States of the Council of Europe of their obligation to clarify the fate and whereabouts of missing persons under human rights and international humanitarian law. This obligation derives, *inter alia*, from the 1949 Geneva Conventions, the 2006 International Convention for the Protection of All Persons from Enforced Disappearance and Articles 2 and 3 of the European Convention on Human Rights (ETS No. 5).
5. The Assembly welcomes the range of judgments of the European Court of Human Rights concerning persons who went missing following conflicts between Cyprus and Turkey, in Spain, the former Yugoslavia, as well as in the Chechen Republic. These judgements highlight the responsibility of States to trace missing persons and hold them to account for failing to do this. These judgments also clarify that States involved in relevant conflicts remain under an obligation to solve the issue of missing persons until a proper investigation has been carried out. This means that these States can be held accountable for many years after a disappearance has occurred. The Assembly also notes that through further examination of relevant cases, the European Court of Human Rights will push member States to speed up the process of bringing truth to families on the fate of their missing.
6. Considerable progress has been made to solve the issue of missing persons following conflicts in Cyprus and in Bosnia and Herzegovina, Serbia and Croatia. In other conflicts, involving Armenia, Azerbaijan, Georgia and the Russian Federation, true recovery remains a pressing issue which hinders reconciliation.
7. Therefore, the Assembly considers that there are five priorities that have to be tackled by member States and relevant *de facto* authorities, to solve the problem of missing persons in Europe, both now and in the future:
 - 7.1. The first priority is to place families of missing persons at the centre of all actions concerning the issue of missing persons. The Assembly therefore calls on those involved in conflicts to:
 - 7.1.1. promote multidisciplinary assessments of the needs of families of missing persons;
 - 7.1.2. provide families of missing persons with the necessary legal, psychological and social assistance;
 - 7.1.3. ensure that the needs of single heads of families are given special attention, taking into account the specific situation of women;
 - 7.1.4. involve the families of missing persons in the investigations into the cases of missing family members;
 - 7.1.5. provide assistance to the associations of families of missing persons, as they contribute significantly to the process of solving the issue of missing persons;
 - 7.2. As a second priority, the development and promotion of national legislation remains essential in addressing the problem of missing persons, in particular in preventing disappearances, ascertaining the fate of missing persons, ensuring the proper management of information and supporting families of the missing. Therefore, the Assembly calls on member States, as well as relevant *de facto* authorities, to create the necessary legal framework to solve the problem of missing persons in Europe, and to:
 - 7.2.1. recognise in legislation the right to know, and to ensure that the systematic denial of the right to know of the families of missing persons by authorities is punished as a criminal offence;
 - 7.2.2. recognise within legislation every missing person as a legal personality;

2. Draft resolution adopted unanimously by the committee on 27 June 2013.

- 7.2.3. codify in legislation enforced disappearance as a criminal offence;
- 7.2.4. ensure that perpetrators of enforced disappearance are prosecuted;
- 7.2.5. make sure that perpetrators of enforced disappearance do not benefit from any amnesty or similar measures that might exempt them from criminal responsibility.

7.3. Supporting the functioning of national and regional mechanisms created to prevent and solve the problem of missing persons is a third priority. The Assembly encourages member States and *de facto* authorities concerned, where relevant, to:

- 7.3.1. take all necessary measures to recover the human remains of missing persons and return them to their families, whenever possible;
- 7.3.2. make sure that national or other mechanisms dealing with the issue of missing persons are independent and impartial in their working methods;
- 7.3.3. involve non-governmental organisations working on the issue of missing persons in the work of national or other mechanisms on missing persons and provide them with support;
- 7.3.4. support and provide all necessary assistance to regional mechanisms addressing the issue of missing persons;

7.4. Access to information on missing persons, which is essential in establishing their identity, location and fate and the circumstances of their disappearance and/or death is a fourth priority. The Assembly therefore calls on those involved to:

- 7.4.1. appoint a special authority to centralise all information available on missing persons and to be in charge of collecting and checking ante-mortem data and ensuring a reliable procedure for implementing identification measures;
- 7.4.2. collect, protect and manage data on missing persons according to international standards and to co-operate with each other on the exchange of information, notwithstanding the often difficult political relationship between parties to the conflict;
- 7.4.3. make sure that the data on missing persons is only used for the purpose for which it was collected and not for any other purpose, unless the consent of the persons concerned is obtained;

7.5. As a fifth priority, it is important that all feasible measures are taken to identify the human remains of missing persons and to record their identity. The Assembly therefore calls on those involved in conflicts to:

- 7.5.1. respect the right of families to recover the remains of their missing family members and to ensure that the identification process of human remains includes DNA analysis and other forensic and scientific methods of expertise;
- 7.5.2. make sure that all professionals involved in forensic recovery respect the legal rules and professional ethics applicable to the management, recovery and identification of human remains;
- 7.5.3. ensure ownership of the forensic expertise, including forensic expertise provided by the International Committee of the Red Cross (ICRC) and the International Commission on Missing Persons (ICMP).

8. In addition to the five priorities put forward above, the Assembly calls on member States to:

- 8.1. provide financial support and human resources to the activities of international bodies dealing with the problem of missing persons, in particular, the ICRC the United Nations Working Group on Enforced or Involuntary Disappearances and the ICMP;
- 8.2. become a Party to the 2006 International Convention on the Protection of All Persons Against Enforced Disappearance as soon as possible, if they have not already done so.

9. The Assembly encourages the Council of Europe Commissioner for Human Rights to continue his activities in monitoring the problem of missing persons as a result of armed conflicts in the countries and regions concerned.

10. The Assembly recognises the important role played by the ICRC in resolving cases of disappearance during and after armed conflicts and on raising awareness of the problem of missing persons in Europe. It encourages the ICRC to continue its valuable assistance to the countries and regions concerned in solving the issue of missing persons.

B. Explanatory memorandum by Mr Sheridan, rapporteur

1. Introduction

*“A missing person is a person whose whereabouts are unknown to his/her relatives and/or who, on the basis of reliable information, has been reported missing in accordance with the national legislation in connection with an international or non-international armed conflict, a situation of internal violence or disturbances, natural catastrophes or any other situation that may require the intervention of a competent State authority.”*³

1. Go to Bosnia and Herzegovina, Azerbaijan or any of the countries in Europe where there are missing persons from a conflict. Stop any individual on the street and ask the question, “Do you know a family waiting for information about a missing person?” Most likely he or she will give you not only a name but a story.

2. The fate of the missing often remains unknown for decades. This has an impact not only on the individual who has disappeared but also on the family, friends and community of the missing. From there, it reaches outwards to the whole of society. As long as a person is missing, this issue will remain an open wound for all concerned, a sore which never heals. It stops everyone from moving on after conflicts.

3. We cannot afford to ignore the missing any longer. It is for this reason that I have taken up this report, which builds on previous work by the Parliamentary Assembly.⁴

4. The international community is commemorating an important event in 2013: the 10th anniversary of a conference organised by the ICRC entitled “The Missing: Action to resolve the problem of people unaccounted for as a result of armed conflicts or internal violence and to assist their families”.⁵ I hope this report can contribute to this commemoration by assessing the progress and evaluating the challenges we still face regarding the missing in Europe.

5. I would like to express my gratitude to the Secretariat of the International Committee of the Red Cross (ICRC) for their assistance in preparing this report.

6. In order to focus on this subject more closely, I have chosen to concentrate on the situation in Cyprus, the Balkans and the North and South Caucasus where many are still missing as a result of the conflicts over the past decades. Although the scope of this report does not cover the issue of missing persons in Spain and Northern Ireland, its conclusions could apply equally to these areas, as well as other parts of Europe.

2. Where are the missing? – An overview

7. While preparing this report, I went on a fact-finding mission to the headquarters of the ICRC in Geneva on 3 December 2012, where I was provided with the necessary expertise and updated statistical information about missing persons in Europe.⁶ The table below is a summary of the current state of affairs regarding the fate of the missing within the purview of this report, compiled from different sources.

Country/territory ⁷	Number of registered missing persons	Number of exhumed remains	Number of burial sites identified	Number of remains returned to their families	Number of persons still missing
Cyprus ⁸	1 619 Greek Cypriots 503 Turkish Cypriots	941	700 (447 sites did not contain any human remains)	285 Greek Cypriots 68 Turkish Cypriots	1 464 Greek Cypriots 494 Turkish Cypriots

3. Guiding Principles/Model Law on the missing, ICRC, Article 2.1.

4. See [Recommendation 1056 \(1987\)](#) on national refugees and missing persons in Cyprus, [Recommendation 1685 \(2004\)](#) on persons unaccounted for as a result of armed conflicts or internal violence in the Balkans, [Resolution 1553 \(2007\)](#) and [Recommendation 1797 \(2007\)](#) on missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions

5. International Conference of Governmental and Non-Governmental Experts, Geneva, 19-21 February 2003.

6. In the preparation of this report, the rapporteur prepared a more extensive background document: see document AS/Mig (2013) 9.

7. All statistics apart from those for Cyprus are taken from ICRC April 2013 Statistics. Please note that figures in the last column do not necessarily correspond to figures of the second column minus data available in columns 3, 4 and 5. Missing persons can be located alive. Missing persons can be located dead and exhumed, but have never been registered by the ICRC as missing persons in the first place.

8. Committee on Missing Persons in Cyprus, Quick Statistics, February 2013.

Croatia	6 419			2 542	2 244
Bosnia and Herzegovina	22 438			13 543	8 207
Kosovo* ⁹	6 024			2 685	1 753
Chechen Republic, Russian Federation	2 292				2 126
Ingushetia, Russian Federation	148				108
Dagestan, Russian Federation	104				66
North Ossetia, Russian Federation	68				63
Kabardino-Balkarie, Russian Federation	28				19
Armenia	507				413
Azerbaijan	4 386 (474 for Nagorno Karabakh)				4 204
Georgia, Abkhazia	1 763 Georgians 114 Abkhaz	2		2	1 762 Georgians 114 Abkhaz

8. These statistics speak for themselves. But beneath them are buried even more eloquent stories. I would like to share one, in order to put names and faces to the numbers:

Story of Guliko Ekizashvili¹⁰

The last time Guliko Ekizashvili saw her son Besarioni was over 15 years ago, when he went to join the war in Abkhazia, Georgia.

In her modest home on the outskirts of Tbilisi, Georgia, one wall is covered with pictures of the handsome young man with dark wavy hair and an intense regard who disappeared from her life a few weeks before his 22nd birthday. "He told me 'I have to fight for my country'", she recalls.

Eleven days after he left for the breakaway republic of Abkhazia, his parents were informed that most of his battalion had been killed, and that he was in hospital with an injured knee. They took a plane to see him, but he wasn't there. Ekizashvili's husband joined the fighting while she set out on foot, looking at corpses in the forest and walking from village to village showing his picture. She slept on benches in bus stops, eating fruit from trees. "There was a rumour that some men were thrown over a cliff in Tsugurovka. It's the only place I wasn't able to go," she says. Eventually she had to return to Tbilisi, but she never gave up hope. "Just before my husband died seven years ago, he was slipping in and out of consciousness and suddenly he said, 'I see my son, he's alive'. 'Where is he?' I asked, but he couldn't answer." She breaks off in sobs, her suffering as deep today as it ever was.

9. The absence of answers is endemic to the problem of the missing. Not only have human beings disappeared in areas where conflicts have taken place, but the basic facts about them have been lost. Information that would allow the location, recovery and identification of their remains is frequently inaccessible or missing too. Thus the gaps in the table above also tell a tragic tale.

10. Despite the assistance of the International Commission on Missing Persons (ICMP) and the ICRC in enabling countries of the Western Balkans to account for 70% of the disappeared during the last two decades, there are still around 12 000 persons missing in this region. In Cyprus, 40 years after the conflict, the remains of only 355 missing persons have so far been identified and returned to their families. Almost 2 000 families on this island are still waiting for information regarding the fate of their loved ones and they remain ignorant regarding the circumstances under which their relatives disappeared. Information on the missing in the North and South Caucasus is not progressing either: there are still up to 2 000 persons unaccounted for in Chechnya and almost 5 000 people have disappeared as a result of the conflict over the Nagorno Karabakh region.

9. * All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

10. The Missing: a hidden Tragedy, www.redcross.int/en/mag/magazine2008_1/4-9.html.

11. In addition to lost lives and identities, information is also missing on the burial sites of these people. Even though exhumation processes are ongoing in the Balkan region, lack of knowledge about new gravesites and lack of strategies to address this issue have slowed progress down considerably. In August 2012, the annual rate of identification of missing remains was only about 900 cases for Bosnia and Herzegovina, 100 for Croatia and 49 for Kosovo. Unfortunately, a number of already exhumed and stored human remains in these countries are still waiting to be identified. Indeed, if the identification of remains in Kosovo continues at the present rate, it may take up to 30 years to solve all cases of missing persons. In the North and South Caucasus, the exhumation of missing persons has been further hampered by the lack of co-operation between former conflict parties in sharing information about gravesites.

12. Even when burial sites have been found, even when bodies are discovered and identified, crucial evidence to convict those responsible is sometimes withheld. In some cases, there is an evident reluctance on the part of the local courts to pursue the matter and thus a refusal to ensure that justice is done. The story below, of the murder of a family in Bosnia and Herzegovina, illustrates the difficulty of bringing perpetrators to justice, in particular when crimes remain unpunished for decades.

Story of the Matanović family¹¹

Father Tomislav Matanović, the Croatian Roman Catholic parish priest of Prijedor in north-western Bosnia and Herzegovina, was arrested by the local Serb police on 24 August 1995 and detained in the Prijedor police station overnight. The following day he was taken to the house of his parents Josip and Božena Matanović, and all three were placed under house arrest. The Matanović family remained in detention, guarded at all times by local police officers, until 19 September 1995, when they were taken to the Urije police station. They were not seen alive again. In September 2001 the remains of three handcuffed bodies were found at the bottom of a well in the village of Biščani, near Prijedor, by Bosnian Muslim refugees who were returning home. Forensic tests identified the bodies as Father Matanović and his parents.

In January 2003, 11 former policemen were charged with war crimes in connection with the illegal detention of the Matanović family. The trial opened in May 2004 and on 11 February 2005 all suspects stood trial for the illegal detention of Tomislav and his family, but the court rendered an acquitting verdict based on lack of evidence. Another investigation by the Ministry of Interior of the Republika Srpska in co-operation with the Chief Prosecutor was still ongoing in October 2011. None of the 11 former police officers have been charged with the murders.

13. Stories of this sort are numerous, and with still around 20 000 missing persons in Europe, even years after the resolution of armed conflicts, the pace of progress in identifying these people is painfully slow. This overview reveals the urgency of the problem. It highlights the importance of speeding up the process before it is too late. It also demonstrates the absolute need for States to respect their obligations under international humanitarian law to achieve this end.

3. Why have we failed?

14. Lack of political will is the principle reason why the remains of missing persons have not yet been returned to their families for proper burial in regions where conflicts have taken place in Europe. Far too few politicians in these countries ask forgiveness for the sins inflicted by their predecessors. Far too many still hide behind the demands of reciprocity for their efforts, or treat victims with partiality. We will not resolve the issue of the missing, whatever their ethnic origin, as long as it is still seen as a political rather than a humanitarian concern.

15. This lack of will manifests itself initially in a lack of co-ordination between former belligerent parties. Even though some efforts had been undertaken by Balkan countries to improve regional co-operation on the issue of missing persons, Bosnia and Herzegovina still has not concluded bilateral agreements with neighbouring countries. These agreements are essential to demonstrate a readiness on the part of the authorities to continue co-operation of this kind.

16. As a result of inadequate co-ordination, data on missing persons is often absent or incomplete. Without bilateral agreement to endorse co-operation, former belligerent parties refuse to exchange information on burial sites and the location of dead bodies. They sometimes impede access to the facts or give inaccurate information about them. Worse still, they may even use such data as bargaining chips to exert political leverage on each other.

11. The Right to Know: Families still in the dark in the Balkans, Amnesty International, August 2012, p. 9.

17. In addition to the lack of co-operation at the international level, limited national capacity also impedes progress on the issue of the missing. Many countries still lack qualified forensic experts for the efficient recovery process and the scientific identification of missing persons. Since they have traditionally relied on the assistance of international forensic teams, many do not have enough trained professionals in their own countries to speed up the exhumation and identification process.

18. A lack of financial resources has also played a part in this problem, especially in the present economic crisis in Europe. DNA identification is very costly. Although the collection of ante-mortem data from the families has been mainly financed by the ICRC, governments have other priorities and do not provide the additional support needed for the substantial budget which is required. As a result, economic constraints have also put on hold the process of the recovery and identification of missing persons.

19. However, apart from these causes, the fundamental reason for the failure to resolve the issue of missing persons is fear: fear of families to seek answers about their relatives; fear of authorities to tell the truth about their fate. Authorities are afraid of legal proceedings; they want to cover up the crimes of previous regimes and put security and political stability before the right of people to know what has happened to their loved ones. Families are afraid of reprisals; they have no recourse to legal protection when they demand information about the missing and are intimidated by the possibility of further arrests, and yet more disappearances.

20. Overcoming fear and exerting political will are essential if we are to resolve the issue of missing persons and face up to the human cost of past conflicts in Europe.

4. What is the legal situation?

21. International law is very clear concerning the protection of missing persons. Both branches of the law, humanitarian as well as human rights law, respect the right to life. They protect against arbitrary detention and hostage-taking; they defend family life and the right to information.

22. Of particular importance to the issue of missing persons is the right to know.¹² In other words, families must be informed of the missing person's fate and should be able to request information from the authorities. In order to uphold this right, it is now clearly recognised that authorities must search for persons reported missing. This includes carrying out adequate inquiries in order to provide meaningful answers to the families of the missing.

23. The legal position on this matter has been recently strengthened by the United Nations International Convention on the Protection of All Persons Against Enforced Disappearance,¹³ which entered into force on 23 December 2010. This convention requires States Parties to make the crime of enforced disappearance punishable by appropriate penalties, which take into account its extreme seriousness. So far, only 11 member States of the Council of Europe have ratified it.¹⁴

24. The legal position regarding the missing is clear and it is for the European Court of Human Rights to impose sanctions on member States of the Council of Europe if they fail to live up to their obligations. There have been cases against Bosnia and Herzegovina,¹⁵ Croatia,¹⁶ Spain¹⁷ and Turkey¹⁸ in this regard. There are also cases against Russia¹⁹ in relation to the war in Chechnya. In each case where it has found a violation, the Court has indicated general measures to be taken to trace missing persons and to alleviate the

12. The missing and transitional justice: the right to know and the fight against impunity, *International Review of the Red Cross*, No. 862, Monique Crettol and Anne-Marie La Rosa, 30 June 2006.

13. "Enforced disappearance" is defined in Article 2 of the convention as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law". In connection to the problem of missing persons, this convention can be applied only to the cases where the involvement of the State in the disappearance of a person is proved.

14. These are: Albania, Armenia, Austria, Belgium, Bosnia and Herzegovina, France, Germany, Montenegro, Netherlands, Serbia, Spain.

15. *Palić v. Bosnia and Herzegovina* (2011).

16. *Jularić v. Croatia* (2011) and *Skendžić and Krznarić v. Croatia* (2001).

17. *Antonio Gutierrez Dorado and Carmen Dorado Ortiz v. Spain* (2012).

18. *Cyprus v. Turkey* (2001), *Varnava and Others v. Turkey* (2009), *Bozkir and Others v. Turkey* (2013) and a number of other cases.

19. *Edilova v. Russia* (2012), *Khamzatov and Others v. Russia* (2012), *Inderbiyeva v. Russia* (2012) and a number of other cases.

suffering of their relatives, and has emphasised the obligation of States to satisfy families' right to know about their fate. It has also specified that this obligation is valid until a proper investigation has been carried out, which means a State can be held accountable many years after a disappearance occurred.

25. The more member States that ratify international norms and the greater the number of families that take this matter up with their national jurisdiction and the European Court of Human Rights, the sooner the issue of the missing will be resolved.

5. What has to be done?

5.1. Focus on families and their needs

26. Much needs to be done to solve the problem of missing persons, but priority should be given to their family members. The family members of missing persons face constant suffering until the person's fate has been ascertained. This suffering is also often accentuated by the multiple needs the families face as a direct result of the disappearance.

27. These needs range from the need to know and legal recognition of their status as victims, the need to proceed with commemorative rituals, receive economic, financial, psychological support, and the need to be protected against security threats and to receive access to justice.

28. The first is the right to know. Families of missing persons want the truth about the fate and whereabouts of their relatives. They also want public acknowledgement of the disappearance and accountability of those responsible for it. The problem relating to the legal recognition of the fact of a disappearance is closely linked to the right to financial assistance.

29. The second is income or access to social benefits and pensions. As the majority of missing persons are men, the main source of income is often "gone" and women must look after their families on their own. As a result of gaps in legislation and administrative obstacles, families often have no access to social benefits and pensions, and are prevented from exercising their rights under property and family law.

30. The third is that family members often require psychological assistance. Many relatives of missing persons have been through traumatic conflict events and violence, and continue experiencing psychological distress and isolation. They need professional psychosocial and psychological assistance, as well as medical treatment, in some cases.

31. Women and children are most vulnerable, as many women are responsible for the lives of their children and have difficulty finding decent work. Therefore, taking into account the specific needs of women, special attention should be given to the needs of single heads of families.²⁰

5.1.1. Assessing the needs

32. Since the families of missing persons know their needs better than anyone else, a wide variety of assessments should be made, with the aim of understanding these needs. This would help to identify the day-to-day difficulties they face, and ensure that the level of response and the resources available correspond to their requirements.

5.1.2. Addressing the needs

33. The authorities bear the primary responsibility for addressing the needs of the families of missing persons. Some, such as the authorities in Georgia, Azerbaijan, Armenia, the North Caucasus and the Western Balkans, have begun to lend their support to several projects being run by the ICRC in these countries, in co-operation with local partners. This new approach, known as "Accompaniment", is a direct response to the needs of families and ensures links between families and the various persons and organisations providing the necessary support within the community.

34. According to the ICRC, the main goal of "Accompaniment" is to strengthen the ability of individuals and families to deal with the difficulties related to the disappearance of their relatives and to gradually recover a healthy social life and emotional well-being.

20. United Nation Human Rights Council, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary General, Missing Persons, A/HRC/10/28, p. 5.

35. This is accomplished by engaging professionals as well as ordinary people in the community. It is achieved by involving legal, financial and forensic experts as well as social and psychosocial health workers. Only when everyone works together in the community can the needs of the families of missing persons be adequately addressed.

36. I am convinced that understanding families as victims should be endorsed by all actors concerned and the families should be placed at the centre of all actions relating to the issue of missing persons.

5.2. Legislation

37. The next priority in addressing the problem and resolving the issue of missing persons is the creation and implementation of a legal framework. This is essential for defending the rights of the families of missing persons and for preventing new cases. European countries should co-ordinate their national legislation with the relevant provisions of international law on the issue of missing persons. They should also develop domestic laws to implement international standards.

38. Certain European countries, for example the Russian Federation and Serbia, have carried out studies on the compatibility of domestic law with international law on this issue. Bosnia and Herzegovina, Kosovo and Spain have already adopted laws and special provisions for protecting the rights of missing persons and their families. Some countries like Armenia have worked on draft legislation, but not completed it.

39. Defining the legal status of people who have gone missing during armed conflicts, as well as that of their families, should be a priority. Without legal recognition of their status, it is impossible to ensure respect of their rights. Legal provisions have been put in place by Armenia, Azerbaijan, Croatia, Kosovo and Serbia to grant victims, including the families of missing persons, specific social and financial benefits. These include pensions for the families of missing soldiers, reduced health-care and tuition fees, child allowances, food assistance, loans and interim relief.²¹

40. Finally, several European States have ratified and implemented the Rome Statute of the International Criminal Court, which establishes enforced disappearance as a crime against humanity. Some States have gone further and codified enforced disappearance as a crime in domestic legislation.²²

41. I would like to applaud these positive steps and encourage other European States to follow these good examples. However, although many have reached the final goal of putting in place legislation dealing with the issue of missing persons, there is still much to be done to ensure accountability, which can be a measure of redress for the families of missing persons. States are obliged to investigate and prosecute the perpetrators of crimes, who should not benefit from any amnesty and who should not be exempted from criminal responsibility.

42. There are also other measures being taken in this direction. Truth-seeking mechanisms of a non-judicial and transitional nature could also contribute to the accountability process. International commissions of inquiry constitute an important mechanism through which cases of missing persons can be documented and recommendations made to national authorities.

5.3. Functioning mechanisms

43. The third priority is to create competent mechanisms to address the issue of missing persons, at regional, national and international levels.

21. Missing persons, Report of the Secretary-General, United Nations General Assembly, A/67/267, p. 15.

22. Azerbaijan (Article 110 Criminal Code); Belgium (Article 136-ter Criminal Code); Bosnia and Herzegovina (Article 172 Criminal Code); Croatia (Article 158 Criminal Code); Cyprus (Section 4 Law No. 23(III)/2006 of 28 July 2006); Czech Republic (Section 401 Criminal Code); Finland (Chapter 11 Criminal Code); France (Article 212.1 Criminal Code); Germany (Section 7.1.7 German Code of Crimes against International Law); Ireland (Part 2 of the International Criminal Court Act 2006); Lithuania (Article 100 Criminal Code); "the former Yugoslav Republic of Macedonia" (Article 403-a Criminal Code); Montenegro (Article 427 Criminal Code); the Netherlands (Section 4 International Crimes Act 2003); Norway (Section 102 Criminal Code); Portugal (Article 9 Law No. 31 of 22 July 2004); Romania (Article 175 Criminal Code); Serbia (Article 371 Criminal Code); Slovenia (Article 101 Criminal Code); Spain (Article 607-bis Criminal Code); Switzerland (Articles 264.a Criminal Code and 109.e Military Criminal Code); United Kingdom (Section 50 International Criminal Court Act of 2001).

5.3.1. National mechanisms

44. The main task of the national body in charge of missing persons is to conduct investigations in order to give answers to the families of missing persons on the fate of their relatives.

45. Serbia, Kosovo, Azerbaijan and Armenia, as well as the Russian Federation, have established national commissions on missing persons.

46. These commissions have had some successes in finding new gravesites and obtaining information on missing persons. They have also established unified central records of missing persons, as in the case of the Missing Persons Institute of Bosnia and Herzegovina. Some national bodies have compiled and published, in the form of books and Internet sites, lists of missing persons with the details of their disappearance. Such measures reassure the families of missing persons that their requests are followed up. Sometimes, however, these bodies have no direct link with the families of missing persons; it is important that families should be consulted and informed on all developments relating to their cases.

47. What is also important is to make sure that these bodies have the competence to co-ordinate their work with other State authorities for all issues relating to the search for missing persons, the identification of human remains and the protection of the rights of missing persons and their relatives.

5.3.2. Co-ordination mechanisms working at the regional level

48. Co-ordination mechanisms are the processes that are put into place by former opposing parties to ensure co-ordination and information-sharing on issues relevant to the treatment and solving of the issue of missing persons. They are usually set up following the end (or the freezing) of armed conflicts. For example, in the Council of Europe, such mechanisms have been set up in Cyprus and Kosovo, as well as between Georgia and the Russian Federation.

49. These mechanisms promote co-operation between former belligerents in sharing information on missing persons and gathering ante-mortem details from their relatives. Sometimes years are needed to overcome political differences in order to start this important dialogue. In such situations, the role of an intermediate party (an international organisation or third State) can be essential.

50. Such mechanisms allow humanitarian issues to be separated from political ones. They are essential because the one side relies on the other for information on burial sites which are often on the other side's territory. Experience shows that co-ordination mechanisms provide an important place for discussion and the planning of joint efforts. They are nevertheless only as efficient as the goodwill and real investment by the parties involved in the discussions.

5.3.3. International fora

51. There are a number of international organisations and bodies which have an important role to play in solving the issue of the missing.

52. At the European level, the issue of missing persons is also addressed by international organisations such as the Organization for Security and Co-operation in Europe (OSCE) (which assists in the identification of recovered human remains and provides support and assistance to the families of the missing) and the Council of Europe (which examines the political and legal aspects). The Council of Europe deals with the issue of missing persons at different levels. At the level of its Parliamentary Assembly, as already mentioned, several resolutions have been adopted relating to particular countries or regions of Europe. The Council of Europe Commissioner for Human Rights also looks into this problem in his country reports. Finally, the European Court of Human Rights, in its case law, deals with violations of the European Convention on Human Rights (ETS No. 5) as regards the problem of missing persons.

53. At the United Nations level, the Working Group on Enforced or Involuntary Disappearances was established in 1980 by the United Nations Commission on Human Rights. The Working Group does not have legal authority over States, but it helps relatives of persons who have disappeared to find out what happened to their missing family members by acting as a means of communication between them and governments. In more than 30 years of existence, the Working Group has examined more than 50 000 cases from more than 80 countries worldwide.²³ The main concern of the Working Group is the fact that most of the cases opened

23. www.ohchr.org/EN/Issues/Disappearances/Pages/DisappearancesIndex.aspx.

over 10 years ago have still not been resolved. Many governments have not replied to the cases sent to them, considering the missing persons to be dead. Governments of member States of the Council of Europe should be called on to respond more quickly to the Working Group.

54. To conclude this chapter, I would like to stress that all mechanisms dealing with missing persons should receive sufficient financial support from governments to ensure efficiency in performing their tasks. They should also raise public awareness of the problem of missing persons at both national and international levels. At present, the interaction between different national and international mechanisms is very limited. Relevant bridges should be built between these mechanisms to cover the range of expected needs of the families of the missing persons and their communities.

5.4. Access to information

55. I consider that one of the most important challenges is to get people to come forward with information about burial sites, as a matter of urgency. Unless action is taken, many of those with knowledge, who are now ageing, will die without disclosing this information. It is however clear that they are frightened to come forward. They are frightened because they fear criminal prosecution and stigmatisation. How can we help them overcome this fear?

56. To begin with, we need mechanisms which would allow for the exchange of all information useful to the search and identification of missing persons. A good example of such a mechanism is the Missing Persons Institute (MPI) created in Bosnia and Herzegovina. This independent body establishes an obligation for all authorities and relevant institutions to provide information and to co-operate in tracing missing persons.

57. However, we should not forget that the gathering of information should respect a strict legal framework that appropriately regulates data management. More precisely and in order to avoid any misuse of the information provided, there should be no acquiring, holding or using of personal data without consent. Furthermore, the data should only be used for the purpose for which it was gathered and not for any other purpose, unless consent to that end is also obtained.

58. If such consent is withheld, this information should remain confidential and should not be disclosed to a third party. Only under these conditions might sources be more willing to share the information they possess with the mechanism in charge of missing persons.

59. I believe that relevant information is accessible only if confidentiality is guaranteed. The conditions under which the information was initially provided should be respected throughout its use.

5.5. Forensic recovery

60. With respect to the management of human remains and information relating to the dead, it is important to ensure that all feasible measures are taken to identify the human remains and to record their identity.

61. Several challenges arise regarding the collection of forensic information. The process of the recovery and identification of the missing should only begin once a framework has been agreed upon by all those concerned. It should include the establishment of protocols for recovery, ante-mortem data collection, post-mortem examination and identification based on scientifically valid and reliable methods and technologies and/or customary, clinical or circumstantial evidence that are deemed appropriate and that have been previously adopted by the scientific community; appropriate means of associating the communities and the families in the recovery, examination and identification procedures; procedures for handing over the human remains to the family.

62. As regards the forensic process, it requires financial and qualified human resources, which may not be immediately available after the conflict. Very often there is no available medical or dental information on missing persons. Sometimes, it is not possible to recover or identify some bodies.²⁴ The work on forensic investigation is often linked to numerous risks to the lives of persons involved: exposure to remnants of war, attacks from different factions.

24. ICRC, Missing persons: a major humanitarian concern, 28 August 2009.

63. Another challenge is that of ante-mortem and post-mortem data collection, as traditional forensic methods of searching and identification of missing persons are very time consuming. In this respect, the progress made in using DNA forensic science in the identification process of missing persons should be widely promoted. It is useful to note that the majority of missing persons in the Western Balkans were identified by DNA analysis.

64. To respond to these challenges, it is important that all professionals involved in forensic recovery respect the legal rules and professional ethics applicable to the management, recovery and identification of human remains. Whenever possible, the procedures to recover and identify human remains should be carried out by forensic specialists, taking into account the recommendations and best practices provided by competent organisations.²⁵

65. Capacity building, including the training and promotion of local forensic experts, is essential to ensure local ownership and the necessary sustainability of required forensic operations. International forensic teams should not limit their interventions to forensic investigation and analysis, but also emphasise working with, and training and promoting local teams and local forensic experts. In addition, the creation of a national forensic team or the training of forensic professionals who can address the problem usually leads to a general improvement in criminal investigation procedures and, as a result, in the exercise of the rule of law.

6. Conclusions and recommendations

66. The problem of missing persons resulting from Europe's conflicts is still a vital issue for many European States, where reconciliation between former conflicting parties is hampered by the delay in investigating the fate of thousands of missing persons. Non-resolution of this problem is a potential danger for European security, as families of missing persons cannot live in peace without completing their mourning. I have therefore drawn up five priorities for the member States of the Council of Europe in solving the problem of missing persons.

67. My main conclusion is that families of missing persons should be placed at the centre of all action taken by governments.

68. The first priority for the national authorities should be to respect the right of families to know the fate of missing persons, as they are in charge of investigating cases of disappearances which occurred on their territory. States should be obliged to communicate the results of the investigation to families and to return the remains of their relatives, whenever possible. I am pleased to note that there has been notable progress in the development of approaches and initiatives to ensure that families receive proper care and support. However, there is scope for more engagement by States and relevant governmental and non-governmental organisations to ensure that the rights of the families of missing persons are protected and respected at all times, and that their needs are addressed in a comprehensive and holistic manner.

69. The second priority is the development and promotion of national legislation. Such legislation remains essential in preventing disappearances, ascertaining the fate of missing persons, ensuring the proper management of information and supporting families of the missing. Member States of the Council of Europe should create and implement the necessary legal and administrative framework for addressing the issue of missing persons.

70. The third priority is the creation of and support to the functioning of national, regional and international mechanisms to prevent and solve the problem of missing persons. European governments should provide the necessary human and financial resources to ensure their effective functioning.

71. I consider the access to information on missing persons as a fourth priority issue. It is essential in establishing the identity, location and fate of the missing. Governments should ensure that the collection, protection and management of data on missing persons are performed according to international standards. The data on missing persons should only be used for purposes for which they were collected and not for any other purpose, unless the consent of the persons concerned is obtained.

72. This report reveals a strong need for European governments to speed up the process of the exhumation and identification of the remains of missing persons, and to bring the truth of their fate to the relatives and families. Therefore, the fifth and last priority should be the improvement of national forensic

25. Recommendations provided by the 2003 International Conference organised by the ICRC, as well as the best practices developed by the United Nations, the Council of Europe, the International Criminal Police Organization (Interpol), the United Nations Office on Drugs and Crime and the European Network of Forensic Science Institutes.

capacities. More should be done to enhance co-operation in the use of forensic science for the prevention and investigation of violations of human rights and humanitarian law. The development of local forensic capacity in line with applicable forensic good practices should be promoted, including through regional initiatives.

73. The Council of Europe and its European Court of Human Rights also have an important role to play in monitoring and raising awareness of the problem of missing persons in Europe. International co-operation should be promoted with other international and regional organisations involved in solving the problem of missing persons.

74. I would like to underline the role of parliamentarians in bringing the problem of missing persons to the attention of their governments. Parliamentarians in the countries with a problem of missing persons could push their governments to adopt national policies, promote greater openness and develop strategies to help the families of victims.

75. Finally, I would particularly like to stress the important role played by the ICRC in resolving cases of disappearance during and after armed conflicts and on raising awareness of the problem of missing persons in Europe. The ICRC should be applauded for its work and encouraged to continue its assistance to the countries concerned in solving the issue of missing persons.