

The Bournemouth Protocol on Mass Grave Protection and Investigation

© 2020 Melanie Klinkner and Ellie Smith
All rights reserved.

ISBN: 9781858993218

Cover image ©

Foreword

by Her Majesty Queen Noor, Commissioner of
the International Commission on Missing Persons

As a Commissioner of the International Commission on Missing Persons (ICMP) since 2001, I have been privileged and heartened to witness the historic shift towards State responsibility in accounting for missing persons in line with the rule of law.

In the 1990s, domestic and international justice institutions began investigating thousands of cases and corresponding mass graves in the former Yugoslavia. This laid the foundation for rule-of-law-based strategies to secure the rights of survivors and to foster public trust in the capacity and willingness of governments to maintain effective and fair missing persons investigations. These investigations included the consistent use of scientific means to locate and identify the missing. It has also become evident in the same period that proper investigations into large-scale missing persons cases, whether from conflict, human rights abuses, disasters, organised crime or migration, is an investment in social cohesion, and conflict recovery and prevention, as well as sustainable peace and human security.

The obligation to conduct effective investigations of human rights violations and abuses lies with States, regardless of who committed such violations and abuses. Failure to investigate missing persons cases in an effective manner, including the circumstances of disappearance, constitutes a breach of the fundamental human rights of missing persons and their family members. It is also a dangerous abrogation of the rule of law. Effective investigations therefore represent an authentic and necessary commitment to dealing with the legacy of past crimes.

In 2008, a publication prepared under the direction of scholars at Bournemouth University presented a first compilation of experiences and lessons learned from the scientific investigation of mass graves. This was a collaborative undertaking oriented towards formulating Standard Operating Procedures. The new *Bournemouth Protocol on Mass Grave Protection and Investigation* continues this research strategy, involving the work of international experts representing a variety of disciplines and organisations, to define standards on this crucial issue.

The Bournemouth Protocol on Mass Grave Protection and Investigation is firmly based on the premise that standards of investigation and protection applied to mass

graves must support efforts to establish the truth about what happened and facilitate the pursuit of justice. It is through investigations that the State gives meaning to human rights guarantees. Criminal investigations regularly spearhead efforts to locate and exhume mass graves following armed conflict, human rights violations and abuses, and other criminal acts. They focus on securing evidence of crimes and are part of the larger project referred to by courts as the right to an effective investigation. *The Bournemouth Protocol on Mass Grave Protection and Investigation* is an important step forward in providing clarity on international norms and standards. It will enable greater co-operation among organisations in a broad array of settings. Mass graves and sites where horrific violence and human loss have occurred must be protected against interference and investigated to standards that are lawful and respectful. We owe this to the victims' families, and to society as a whole.

The protocol presented here is inspired by and greatly indebted to the many actors involved in mass grave protection and investigation processes, from the legal, investigative and scientific disciplines to community liaison and family support, each with their own rules and standards of professional practice. On behalf of ICMP, it gives me great pleasure to introduce *The Bournemouth Protocol on Mass Grave Protection and Investigation*.



A handwritten signature in black ink, appearing to be 'Queen Noor'.

Her Majesty Queen Noor
Commissioner of the International
Commission on Missing Persons

Preface

by Dr Agnes Callamard, UN Special Rapporteur
on Extrajudicial, Summary or Arbitrary Executions

Mass graves are not isolated accidents of human history. They are scattered across the globe and in every region. Some date back centuries, while others have been discovered only very recently. Yet all have important stories to tell – truths that often have been left untold, denied, covered up or buried. As UN Special Rapporteur focusing on human rights in the context of extrajudicial executions and summary or arbitrary killings, I know that mass graves may be the result of armed conflict, linked to criminal activities or be the result of a dereliction of State duties. I also know that sites of mass killings and mass burials are places where multiple human rights violations may have been committed, possibly repeatedly, over time.

Personal, religious, cultural and historical meanings of a mass grave site and the events surrounding its creation vary from place to place, from individual to individual, from community to community, from country to country. But their significance is beyond dispute and transcends boundaries and generations. It renders mass grave preservation and memorialisation a duty of all generations, past, present and future, to allow for dignified final farewells and the paying of last respects. Therefore, under no circumstances should the existence of a mass grave be denied or covered up, nor the site damaged or destroyed. Under no circumstances should those searching for or speaking of mass graves be imprisoned, threatened or silenced. Instead, a comprehensive human rights-based approach must be taken. Considered treatment, management and stewardship is required that upholds the dignity of the dead, alleviates the suffering of families and communities as much as possible, enables the pursuit of truth and justice, **and** signifies to all an abiding commitment to non-repetition.

The Bournemouth Protocol on Mass Grave Protection and Investigation is a major contribution to this end. It provides a much-needed definition of mass graves and brings together the branches of international law that underpin lawful and respectful protection and investigation efforts in ways designed to benefit families' exercise of their human rights to truth and justice. The Protocol argues for

stronger engagement of the full range of human rights norms, standards and laws applicable to mass graves, the handling of human remains and the interests of affected families, survivors, communities and nations. Applied, the Protocol will help ensure that mass graves, and the human remains contained therein, receive the respectful, non-discriminatory and dignified handling they deserve from the point of initial discovery and investigation through to identification efforts, and on to the fuller pursuit of formal justice and longer term commemoration.

As an international community, our handling of mass graves has so often been inappropriate, discriminatory or, quite simply, indifferent. This has to stop. We can and must do far better and more, to respect and protect the diverse interests and concerns of families, survivors, communities and societies. It is our shared duty to our common humanity.



Dr Agnes Callamard
UN Special Rapporteur on Extrajudicial,
Summary or Arbitrary Executions



UNITED NATIONS
HUMAN RIGHTS
SPECIAL PROCEDURES

SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS

**Mandate of the Special
Rapporteur on Extrajudicial,
Summary or Arbitrary Executions**



Contents

Aim and scope of the Protocol.....	3
Overarching operating principles in the protection and investigation of mass graves.....	6
A. Discovery and safe reporting	8
B. Protection.....	8
C. Investigation.....	9
D. Identification	12
E. Return of human remains.....	14
F. Justice	15
G. Commemoration	16
Appendix 1	17
Appendix 2	18
Appendix 3	19
Appendix 4.....	20
Appendix 5	21
Appendix 6.....	22

Aim and scope of the Protocol

Mass graves are an all too frequent legacy of conflict and gross human rights violations. For the survivors, the need to know the fate and whereabouts of loved ones, and to receive mortal remains for burial and/or dignified commemoration, can be overwhelming. Increasingly this need is being recognised as a legal right to know the truth.

Mass graves contain evidence that is essential to the effective realisation of truth, justice and perpetrator accountability. Effective rules and procedures for the protection, maintenance and investigation of mass graves are therefore vital. At present, however, while there are a number of best practice approaches in operation amongst various actors in the field, no universal, shared or common standards exist. Through a participative and consultative process, this Protocol fills that gap. It neither duplicates nor replaces existing documents on principles and good practice¹. Instead it offers a unifying inter- and intra-disciplinary approach to mass grave protection and investigation. It follows the chronology of these processes in their entirety with a multitude of stakeholders, disciplines and mechanisms coming together for the dual, and mutually reinforcing, purpose of advancing truth and justice, by providing:

(1) An international Protocol on the Protection and Investigation of Mass Graves, anchored in relevant legal provisions, combining and bridging the branches of international human rights law, international humanitarian law and - where applicable - international criminal law; and

¹ See list of such relevant documents in Appendix 1.

(2) an Academic Commentary to the Protocol, reflecting the underpinnings and discussions that led to the various provisions contained therein. The Academic Commentary, published separately, highlights and expands upon competing perspectives and needs that arise in the process of mass grave protection and investigation to ensure that, in practice, they are anticipated and, where possible, mitigated.

Users: The Protocol is intended to be used by practitioners, including but not limited to: government and state officials, law enforcement personnel, legal representatives, forensic experts, health professionals, security personnel and expert civil society actors.²

Scope and application of the Protocol: on a case-by-case basis

The contextual remit of this Protocol is limited to mass graves which arise in the context of gross human rights abuses and conflict, both internal and international. This does not, however, preclude the Protocol being of relevance to mass graves arising out of different situations.³

Victims in mass graves can be men, women and/or children. They can be civilians and/or armed combatants from either side of a conflict. The Protocol is intended to apply without adverse distinction and regardless of political or other opinion, association with a national minority, sex, sexual orientation, gender identity, religion or belief, age, race, colour, language, ethnicity, caste, national or social origin, physical or mental disability, health status, property, birth, marital status, or any other ground recognised by international legal instruments.

There is no such thing as a 'standard' or 'typical' mass grave investigation or exhumation. Mass grave investigations are highly context-specific. This can be due to factors such as geographical and temporal jurisdiction as well as the political environment. As a result, this Protocol is not intended to be prescriptive in terms of essential best practice in all mass grave exhumation cases. Rather, the Protocol provides specific considerations that are intended to support and inform practitioners as they engage with an investigative process in their various capacities, and at all stages. To this end, it should be noted that the considerations contained in this Protocol may not apply in their totality to each investigation. Whilst the Protocol is designed to assist on a universal basis, determination of the applicability of specific aspects of the Protocol should be made by the practitioner on a case-by-case basis.

That said, at a minimum level, and subject to means, the investigative and protection standards applied to any situation should be sufficient to fulfil both truth and justice goals, i.e. they should be able to stand up to authoritative scrutiny.

Methodology

The content of the Protocol is shaped by the experience and input of invited experts, including forensic experts, investigators, judges, prosecutors, security personnel/police, civil society representatives and academics, reflecting experience of mass grave protection and investigation, expertise in human rights, humanitarian and/or criminal law, as well as geographic diversity.⁴

Definitions

For the purpose of the Protocol, we proffer the following working definitions:

- The term **mass grave**, undefined in international law, is used here to mean 'a site or defined area containing a multitude (more than one) of buried, submerged or surface scattered human remains (including skeletonised, commingled and fragmented remains), where the circumstances surrounding the death and/or the body-disposal method warrant an investigation as to their lawfulness'.
- **Missing persons** means 'persons missing as a result of conflict, human rights abuses and/or organised violence.'⁵
- By **victim** the Protocol means 'persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative in the State or as a result of acts which constitute gross violations of international human rights law or serious violations of international humanitarian law.'⁶ Consistent with international law, the definition of victim used in the Protocol encompasses not only individuals located in a mass grave ('primary' or 'direct' victims), but also their families and, where relevant, communities ('secondary' or 'indirect' victims). For the sake of clarity, this Protocol also makes reference to 'families', 'family members' and 'affected communities' where particular provisions pertain to them.⁷

² This might include citizen forensic initiatives where they come under the auspices of an authorised expert civil society organisation. Political initiatives may also 'legitimise' survivors who may be involved in the investigative and exhumation process and who may not be professionals but undertake exhumations. For a further discussion, see the accompanying Academic Commentary.

³ E.g. disasters, including human-made disasters and deaths as a result of border enforcement or trafficking.

⁴ Information on the sampling technique for expert involvement can be found in the accompanying Academic Commentary.

⁵ Adapted from Inter-Parliamentary Union and ICRC (2009), Missing Persons – A Handbook for Parliamentarians at page 9 and in line with the International Commission on Missing Persons' mandate. As with mass graves, there is no one definition of missing persons. The suggested definition here is less narrow in conceptualisation than that found in the 2019 UN Security Council Resolution on Missing Persons as a Result of Armed Conflict, which echoes the 2010 UNHCR definition of persons 'unaccounted for as a result of an international or non-international armed conflict' only (para 9). At the same time the definition here does not expressly include missing migrants, a topic beyond the reach of the Protocol.

⁶ This is a composite definition from the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, at Annex A, 1, and the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Annex V, 8, and echoes article 24(1) of the International Convention for the Protection of All Persons from Enforced Disappearance.

⁷ Where there is express reference to 'families', 'family members' or 'affected communities', this is not intended in any way to suggest that they are not also victims. In addition, it is recognised that individual family and community members might themselves be direct victims of other harms inflicted in the wider context of the violations under investigation, of which mass graves form one part.

- The term **family**, undefined in international law, is used here as a concept that relates to societal practice in a specific context.⁸ For the purpose of this Protocol, family membership is significant for determining, for example, next of kin⁹, the appropriate recipient of mortal remains and issuance of legal status documentation in respect of a missing person. Family membership should be determined according to local laws, customs and/or practices.
- **Forensic** (true to its literal meaning 'in open court' or 'public') implies the scientific, legal and societal realm by bringing matters to and before courts of law and/or other judicial mechanisms (such as a coroner).

Format of the Protocol

The document captures the various chronological processes applicable to mass grave protection and investigation whilst following a normative approach, thus the content of the Protocol has an explicit foundation in international legal rules and principles. Each section will therefore start with a blue box outlining the core normative provisions derived from international law¹⁰ (international norms) thereby providing the legal rationale for the suggested content of the Protocol.

The legal basis

The starting point for the Protocol as a whole is the obligation of States to search and investigate.

International norms

The duty to search and investigate

Under human rights law, States are under a duty to search and investigate when the right of an individual, and its protection, has been breached. The right to life and the prohibition of torture or other cruel, inhuman or degrading treatment include procedural limbs requiring an effective investigation (ICCPR¹¹, Articles 6 and 7). Under regional human rights law, an investigation must be prompt, independent, thorough, impartial and transparent. Its findings must be 'based on thorough, objective and impartial analysis of all relevant elements'.¹²

Article 24(3) of the International Convention for the Protection of All Persons from Enforced Disappearance (CED¹³) requires State Parties to 'take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains'. It is a continuing obligation until the fate and/or whereabouts of the disappeared have been established (CED-Guiding Principles¹⁴, Principle 7). Overall, the duty to conduct an effective investigation is an obligation of means and not of results.¹⁵

International humanitarian law requires the search for the dead (for example, GC I, Article 15; GC II, Articles 18 and 21; GC IV, Article 16; Additional Protocol I, Article 17(2)) and the missing (Additional Protocol I, Article 33(2))¹⁶. Customary international humanitarian law suggests each party to the conflict, whether international or internal, is obliged 'to take all feasible measures to account for persons reported missing as a result of armed conflict' (CIHL¹⁷ Rules 2006, Rule 117).

Whilst acknowledging that mass graves may be located in contexts with poorly equipped or non-existent mechanisms, an overburdened judiciary, insecurity and a multitude of competing, concurrent needs, there is an express requirement for domestic legislation and the establishment of dedicated institutions. Such legislation and institutions are seen as preconditions for an effective response to all missing persons cases.

International norms:

Missing Persons Legislation and dedicated Missing Persons Authority

The CED requires relevant authorities to have official records and registers of all persons deprived of their liberty (Article 17(3)). Registers and database management should respect the privacy of victims and confidentiality of information (CED-Guiding Principle, 11(8)).

⁸ The ICRC Model Law on the Missing utilises the term 'relative of the missing persons' with reference to, and in accordance with, provisions of the applicable domestic legislation (International Committee of the Red Cross (ICRC) (2009), Guiding Principles/Model Law on the Missing, Article 2(2)) (abbreviated ICRC Model Law on the Missing).

⁹ Including genetically related and immediate next of kin (*Pueblo Bello Massacre Colombia*, Judgment on Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No 140 (31 January 2006) para 273 and 274).

¹⁰ The list of normative provisions may therefore be indicative only.

¹¹ International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171 (abbreviated ICCPR). See also UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life) CCPR/C/GC/35 (3 September 2019) para 58.

¹² *Kukhalashvili and others v Georgia*, Judgment, ECtHR Application Nos. 8938/07 and 41891/07 (2 May 2020) para 130.

¹³ International Convention for the Protection of All Persons from Enforced Disappearance (adopted 12 January 2007 entered into force 23 December 2010) UN Doc A/RES/61/177 (20 December 2006) (abbreviated CED).

¹⁴ United Nations Committee on Enforced Disappearance, Guiding Principles for the search for disappeared persons (8 May 2019) UN Doc CED/C/7, Principle 7 (hereinafter CED-Guiding Principles).

¹⁵ *Da Silva v United Kingdom*, Grand Chamber Judgment, ECtHR Application No 5878/08 (30 March 2016) paras 231–238, giving a full Grand Chamber summary of the requirements for an effective investigation.

¹⁶ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949) 75 UNTS 31 (abbreviated GC I); Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949) 75 UNTS 85 (abbreviated GC II); Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949) 75 UNTS 288 (abbreviated GC IV); and Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1979) 1125 UNTS 17512 (abbreviated Additional Protocol).

¹⁷ Henckaerts J-M. and Doswald-Beck L., (2006) Customary International Humanitarian Law, Volume I: Rules (abbreviated CIHL Rules).

A designated Missing Persons Authority for the co-ordination of the missing persons effort (Bosnian Law on Missing Persons¹⁸ Article 7, see also CED-Guiding Principle 12(1) and 12(3)) and the relevant expertise required, is suggested, to include responsibility for mass grave protection, investigation and recovery of human remains. It should also provide safe mechanisms to receive tracing requests (ICRC Model Law on the Missing¹⁹, Article 12 and 12(3)) and create a registry of missing persons and associated information.

The 2019 UN Security Council Resolution stresses the need for 'enacting legislation' (UNSC 2474²⁰ at page 2) at the domestic level to respond to the issue of missing persons. The legislation should be non-discriminatory, ensuring protection, investigation and identification of all individuals to the fullest extent possible.

Whilst state authorities may not always have pre-existing structures to deal with the exceptional circumstances of mass graves prior to conflict, human rights abuse or disasters, there is still likely to be some applicable legal framework whereby processes are governed by the laws, legislation and practices of the affected country.²¹ Unless an international legal mandate takes precedence, respect and adherence to these legal precepts will apply to all actors. They will govern the issues of who has the right to search for missing persons and to demand the investigation of mass graves, and will dictate the return of human remains processes.

A cautionary note on mass grave protection and investigation

Despite the existence of legal rights, mass grave investigations are obligations of means and not results (i.e. best effort and dependent upon available resources). Mass grave investigation is typically a highly complex, lengthy and expensive process, requiring significant planning, co-ordination, resources, official authorisation and political will. The investigation itself is likely to impact multiple stakeholders, including, but not limited to, individual survivors and families; witnesses; victims' groups; affected communities; specialist agencies; NGOs; local, regional and national authorities and state agencies; and international entities such as UN commissions of inquiry and international organisations. As a result, there will be a wide range of individual, collective and societal interests and needs, which may not be compatible or readily reconcilable.

In addition, in situations of significant scale, it may not be possible to retrieve, identify and repatriate all victims from a mass grave, and this is likely to have implications for the families of the missing and affected communities.

It may also impact perceptions of justice and justice-seeking activities both domestically and internationally, where exhumation forms an aspect of a judicial process.²²

Overarching operating principles in the protection and investigation of mass graves

In addition to factors indicated in this Protocol that apply at various stages of the protection and investigation process, there are a number of overarching operating principles that should inform and guide the process(es) in their entirety, applying at all stages, to all actors, at the national and international levels. Whilst listed separately below, they are interrelated in practice.

(1) Do no harm

A 'do no harm' approach underpins all other operating principles, and necessitates an understanding of the potential way(s) in which the presence and conduct of a mass grave investigation could affect the wider context and environment, together with an appreciation of the way(s) in which negative impacts might be avoided and/or mitigated wherever possible.

As interventions within human rights, conflict and post-conflict environments, such operations will inherently form part of the wider dynamics of the context of their operation. Communities may be undergoing rapid social change, which could include a degree of fluidity in social and power structures and the re-establishment of social norms. A 'do no harm' approach in these circumstances will actively seek to avoid undermining existing structures and relationships that are essential to the maintenance of peace and community coexistence. It should also endeavour to avoid creating inequalities or perceptions of bias or favouritism, including in relation to status and resources, or to entrench existing inequalities, including in relation to gender. It will include a clear respect for and, where possible, adherence to cultural sensitivities and norms, and the known religious beliefs of victims and/or their families should be taken into consideration as far as possible and to the extent they do not adversely affect the achievement of an effective investigation.

(2) Physical and emotional safety

The physical and emotional safety of the investigation team, the families of the missing, witnesses and any other party involved with the investigation is paramount.

The safety, dignity, privacy and wellbeing of victims and their families should remain a key concern for all actors without distinction. This may require initiatives to support physical and psychological safety, including making appropriate referrals and the adoption of considered approaches when conducting interviews with potentially traumatised individuals. In addition, care should be taken to minimize and respond to the incidence of vicarious trauma and other negative emotional impacts in team members.²³

¹⁸Bosnia and Herzegovina: Law on Missing Persons (21 October 2004), Official Gazette of Bosnia and Herzegovina 50/04.

¹⁹ICRC Model Law on the Missing.

²⁰UNSC, Resolution 2474, of 11 June 2019, UN Doc S/RES.2474.

²¹See, for example, Interpol (2018) Disaster Victim Identification Guide, Part B, Annexure 1, at section 4.1.

²²Family and community liaison, including the management of expectations is dealt with in greater detail below, in the overarching principles and in Section C of these this Protocol.

²³See, for example, OHCHR, Manual on Human Rights Monitoring, Chapter 12, which contains detailed guidance on interviewing traumatised individuals, as well as self care.

Specific protection strategies and activities should also be developed. The public should be made aware of the existence of protection measures in order to provide reassurance and to encourage their engagement with the investigation. Where the prevailing security situation permits, the specific content of protection measures relating to victims' families and prospective witnesses might also be placed in the public domain. Those directly engaging with any investigation should be made aware of the content of relevant protection measures, including any limits on the protection regime offered in order that any involvement with the investigation is based upon an informed decision.

Respect for the dignity of victims includes the respectful and careful handling of human remains.

The issue of safety should be kept under review.

(3) Independence and impartiality

A non-discriminatory and impartial approach should apply to all.²⁴ In order for an investigation to be perceived as legitimate in the eyes of an affected community, and so enhance community engagement, support for the rule of law and public accountability, any investigative team must not only operate with independence and impartiality, they must be seen to do so. As far as possible, investigation teams should seek to avoid, limit or mitigate situations which might render their activities susceptible to perceptions of political, religious or ethnic bias or control. It should be noted, however, that mass graves typically occur within a highly-charged political and/or cultural context, which may still be ongoing at the time of the investigation. As a result, investigative teams should be aware that the exhumation of a particular grave could, of itself, give rise to perceptions of bias in some sectors of society.

(4) Confidentiality

Assurances of and respect for confidentiality in relating to personal details and other identifying data may be critical in building trust with, and ensuring the safety of, suspected victims' families, and could be instrumental in ensuring reporting of possible mass grave sites, the identity of missing relatives and the provision of missing persons data and DNA reference samples.

Procedures for confidentiality should be established, understood and applied by all members of the investigative team. The terms of confidentiality procedures should be consistent with national provisions, communicated to affected communities and made publicly available. Families of the missing and other community members should also be made aware of the limits of confidentiality procedures. Where the identification and/or investigative processes entail the need or obligation for data sharing, the process, nature and purpose of sharing should be made apparent at the earliest stage possible. Any data sharing should be limited only to those individuals and bodies necessary to ensure achievement of the objectives of the exhumation process, and to the extent agreed by the individual(s) concerned.

(5) Transparency

All stages of the investigation, exhumation, identification and return of human remains process should be as transparent as possible for all parties involved in the protection and investigation effort, the families of the missing and the public. Transparency will serve to support public scrutiny of the process. The establishment of clear, transparent and accessible formal procedures and protocols to guide the process will be instrumental.

Where expert practitioners are members of statutory/regulatory bodies, the processes by which those bodies certify the competence of members should also be available and transparent in order to enhance public and family perceptions of practitioner credibility. Where applicable, specific accreditation of scientific laboratories used for the examination of human samples or materials should be available, together with any existing scientific, technical and administrative procedures adopted by the laboratory.

Any limits on transparency should be strictly necessary, consistent with the rights of victims and their families to dignity and confidentiality, and serve a legitimate purpose, including the safety of all actors and potential actors involved.

(6) Communication

The early establishment and maintenance of communication strategies and channels (including via social media) with the affected community, the media and the public more broadly is essential to the realisation of trust, goodwill and legitimacy for the operation, and will enable the delivery of other vital aspects, including reporting - both of grave sites and the missing - as well as engagement with the identification and investigative processes. Clear and ongoing communication also provides the platform for transparency. Communication strategies should ideally envisage and accommodate a two-way flow of information, and incorporate regular updates.

(7) Realistic expectations

The families of the missing may have high hopes that their loved ones will be identified and returned to them for dignified commemoration. In practice, however, identification and the return of human remains may not always be possible, and expectations should be managed as much as possible to ensure continued engagement and support for the exhumation process. Difficulties may be particularly pronounced in situations where atrocities have been perpetrated on a significant scale, where there are a multitude of mass graves and missing persons, where graves remain undiscovered and/or where limited capacity and resources are likely to limit exhumation and/or identification efforts. All parties involved in the protection and investigation of the mass grave should avoid making commitments to families which they may be unable to keep.

²⁴Notably, this might entail the adoption of differential investigative approaches in the cases of, for example, women, the elderly, traumatised individuals and/or children, where factual inequalities or difficulties exist in practice.

A. Discovery and safe reporting

International norms

Under international human rights law, the CED requires the domestic implementation of a meaningful right to report, to ensure an individual who alleges that an enforced disappearance has occurred can report the facts to the competent authorities whilst being afforded appropriate protection (CED Article 12(1)). Even without a formal complaint, so long as there are reasonable grounds to believe an enforced disappearance has occurred, the authorities are required to investigate (CED, Article 12(2)).

Under international humanitarian law, parties to the conflict must record all identifying information before a burial of human remains and mark the grave location (CIHL Rules, Rule 116; GC IV, Article 130).

The initiation of a mass grave investigation may depend upon the authorities first being alerted to the suspected presence of a mass grave. Domestic systems may even stipulate a duty to report.²⁵ However, such reports may not always be forthcoming where the 'informant' (who may or may not be a relative of a missing person) wishes to remain undetected by, or unknown to, the authorities.

Safe reporting: The provision of **safe processes for notifying** the authorities is required.²⁶ Individuals or agencies may be the first to discover or hear reports of a suspected mass grave. Reporting can include or should trigger the recording of the location of a suspected mass grave. This can be achieved through geomatic services and tools recording co-ordinates and locations to pinpoint sites, such as:

- Global Positioning System (GPS) or Military Grid Referencing System (MGRS);
- Maps on a mobile phone;
- Meta-data from photographs taken on smartphones.

Preliminary documenting of the site can be done through:

- Photographs;
- Video recording;
- Written or audio-recorded descriptions of a site;
- Drawing or identification on a map.

This may be done by first responders, reporters or locals who have spotted a possible site.²⁷ This should be followed up by investigative agencies/officials

undertaking an initial assessment of the site. Equipment such as drones, satellites and other non-invasive scanning technologies, where available, may further assist in documentation.

B. Protection

International norms

To conduct an effective investigation, including ensuring the integrity of evidence obtained from a site, it is essential that a mass grave is not tampered with or disturbed by third parties (including first responders). CED Article 12(3) (a) prescribes that the authorities have the 'necessary powers and resources to conduct the investigation effectively, including **access to the documentation and other information** relevant to their investigation' (emphasis added).

Human rights law jurisprudence stresses due diligence and suggests that 'authorities must take the steps reasonably available to them to secure evidence'.²⁸

Under international humanitarian law, Article 34(2) (b) of Additional Protocol I requires the protection of grave sites. There is also a need to 'take all possible measures to prevent the dead from being despoiled', with desecration or mutilation of dead bodies being categorically prohibited (CIHL Rules, Rule 113; ICC St. Article²⁹ 8(2)(b)(xxi) and 8(2)(c) (ii) as a war crime); and respectful disposal of dead bodies including respect for and maintenance of the graves (Rule 115) is required.

Stealing from the dead, even without the added offence of killing, constitutes a crime.³⁰

Protection of the site is paramount to preserve the integrity of the remains and evidence and lines of inquiry but at the same time may draw attention to the mass grave as a site of interest, increasing the danger of the destruction of evidence.

Inexpert exhumation may result in commingling, incomplete collection of evidence required for identification and/or criminal investigation purposes, a failure to collect data to appropriate evidential standards and increased post-mortem damage to mortal remains.

Improper recovery of bodies can also entail disrespectful handling (including public viewing) and exacerbate family trauma. Protection can guard against unauthorised graphic and distressing images being taken and circulated.

²⁵ See, for example, Iraqi Law No. 13 of 2015, Affairs and Protection of Mass Graves Law, amending Law No. 5 of 2006, Protection of Mass Graves, Article 9. Similarly, the 2003 Criminal Code of Bosnia and Herzegovina under Article 231a criminalises the failure to report a mass grave site with imprisonment (Bosnia and Herzegovina: Criminal Code (27 June 2003), Official Gazette of Bosnia and Herzegovina 37/03).

²⁶ The ICMP, for example, offers an Online Inquiry Centre and through its Site Locator anyone can report this way.

²⁷ *Global Rights Compliance* (2016), Basic Investigative Standards for first Responders to International Crimes.

²⁸ *Treskavica v Croatia*, Judgment, ECtHR Application No. 32036/13 (12 April 2016) para 60, noting that this includes forensic evidence. Information on how to deal with a potential crime scene is contained in the 2011 Handbook on assisting international criminal investigations in section 7.1 on Securing the Crime Scene, page 65. The Minnesota Protocols state that '[a] crime scene should be secured at the earliest possible opportunity and unauthorised personnel shall not be permitted entry' (page 14 at para 59).

²⁹ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force on 1 July 2002) 2187 UNTS 3 (abbreviated ICC St.).

³⁰ *Pohl et al.* US Military Tribunal in Nuremberg (3 November 1947).

Protection additionally safeguards human remains against contamination, desecration, robbery, scavengers and the movement/relocation of bodies to secondary sites, where a perpetrator is seeking to evade detection. Unauthorised trespassing and tampering may constitute a criminal offence within the domestic system.³¹

Preconditions for an effective protection regime:

- Verification of reports and evidence through triangulation with other sources.
- Mapping and documenting mass graves in terms of their scale and the local context in which they are situated.

Necessary protection steps may include:

- Securing site and securing access: legal permission³² to access the land should be sought and obtained. This may also require community liaison and consent in practice. Access may be affected by the presence of culturally significant sites, geographical factors and control. Dangers inherent at a site may include unexploded ordnance and contaminants.
- Protection measures may include: fencing to secure the outer perimeters; horizontal coverage to protect surface-lying remains and security guards and on-site monitoring. Such measures are also dependent on the length of time between discovery and investigation, the local context and vulnerability of the site (i.e. exposure to elements and animals). Securing the site may require safety measures for those offering protective measures, as public sentiment might be against them.
- Physical access may not always be possible for example where investigators are not able to enter the country. Off-site monitoring through satellite imagery may be the only protective measure available.

Protection should be afforded whether a site has been tampered with or not.

C. Investigation

International norms

Under human rights law the duty to conduct an effective investigation means that the investigation needs to be independent and adequate (for example, CED Article 12), capable of determining facts and identifying those responsible.³³ This includes securing forensic evidence and autopsies for a complete, accurate record and independent analysis of injuries and cause of death.³⁴ The investigation must have sufficient authority to obtain information and hold officials to account. It must be conducted promptly; overall, it is a continuing obligation to investigate³⁵ but an obligation of means and not of ends.³⁶ The Inter-American Court of Human Rights stresses the need for an investigation to consider the broader context and complexities surrounding events³⁷ to achieve the 'most complete historical truth possible, including the determination of patterns of collective action'³⁸ in line with the right to know the truth (for example, CED Article 24(2)). The CED further specifies in Article 12(4) that member states ought to 'take the necessary measures to prevent and sanction acts that hinder the conduct of an investigation.' Where appropriate, this may include international collaboration between States and relevant agencies (CED-Guiding Principles, Principle 3(4)).

Investigations pursuing purely humanitarian goals may not be 'of themselves sufficient to meet the standard of an effective investigation' as required by European Convention Article 2.³⁹

According to the Orentlicher Principles⁴⁰; '[i]rrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate'.

Under international humanitarian law, families have the right to be informed of their family members' fate, and may have recourse to the State for providing the information (Article 32 of Additional Protocol I). Rule 117 of the CIHL Rules suggest that for both international and non-international armed

³¹ See, for example, Iraqi Law No. 13 of 2015, Affairs and Protection of Mass Graves Law, amending Law No. 5 of 2006, Protection of Mass Graves.

³² Principle 10(3) of the 2019 Guiding Principles for the search for disappeared persons demands unrestricted access to the competent authorities including 'full powers to conduct unannounced visits to all places where the disappeared person may be, including military and police facilities and private premises'. Where necessary, this should include the 'preservation of sites relevant to the search' (ibid).

³³ *Kukhalashvili and others v Georgia*, Judgment, ECtHR Application Nos 8938/07 and 41891/07 (2 April 2020) para 129.

³⁴ Ibid, at para 129.

³⁵ *Aslakhanova and others v Russia*, Judgment, ECtHR Application Nos 2944/06 and 8300/07, 50184/07, 332/08, 42509/10 (18 December 2012) para 230.

³⁶ *Da Silva v United Kingdom*, Grand Chamber Judgment, ECtHR Application No 5878/08 (30 March 2016) paras 231–238, giving a full Grand Chamber summary of the requirements for an effective investigation.

³⁷ *The Massacres of El Mozote and other Places v El Salvador*, Judgment on Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No 252 (25 October 2012) para 299.

³⁸ *Valle Jaramillo et al. v Colombia*, Judgment on Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No 192 (27 November 2008) para 102.

³⁹ *Cyprus v Turkey*, Grand Chamber Judgment, ECtHR Application No 25781/91 (10 May 2001) para 135.

⁴⁰ United Nations Commission for Human Rights, Report of the independent expert to update the Set of Principles to combat impunity (18 February 2005) UN Doc E/CN.4/2005/102/Add.1 (abbreviated Orentlicher Principles) Principle 4.

conflict, parties to the conflict 'must take all feasible measures to account for persons reported missing'. The 2019 Guidelines for criminal investigations as a result of international humanitarian law violations⁴¹ require investigative standards to be compliant with the principles of independence and impartiality (Guideline 7); thoroughness (Guideline 8); promptness (Guideline 9) and transparency (Guideline 10) with the International Criminal Court requiring investigators to 'observe the highest standards of integrity and conduct'.⁴²

Mass grave investigations may form an integral part of an effective wider investigation into potentially unlawful deaths. Information about the context of the mass grave(s), provided by witnesses, members of the community and survivors can hold invaluable information for the protection and investigation of graves.⁴³

The Minnesota Protocols stipulate the following minimum requirements for the investigation of potentially unlawful deaths: '(a) Identify the victim(s); (b) Recover and preserve all material probative of the cause of death, the identity of the perpetrator(s) and the circumstances surrounding the death; (c) Identify possible witnesses and obtain their evidence in relation to the death and the circumstances surrounding the death; (d) Determine the cause, manner, place and time of death, and all the surrounding circumstances. (...) and (e) Determine who was involved in the death and their individual responsibility for the death' (at D.1.25. page 7, footnotes omitted).

Particular issues to consider in good mass grave investigation practice:

The planning phase

(1) Overarching planning considerations

- Which entity has overall responsibility for the mass graves in the context of the wider missing persons effort?⁴⁴
- Who should plan the mass grave exhumation, identification and return of human remains process?
- What is the scope of the planned investigation?
- What multi-disciplinary teams need to be assembled with what levels of accountability?⁴⁵
- What additional entities or authorities are likely to be involved and how will they be collectively co-ordinated?
- How does the mass grave investigation sit with other/ wider investigative activities?⁴⁶

(2) Plans for community access and mitigating adverse impact

- Building of relationships and trust through considered explanation of the investigative purpose and processes and the management of realistic expectations is essential. This will aid in securing access to site, context, information and acceptance in practice.
- Planning should anticipate and seek to mitigate community impact whilst preserving the investigative integrity.

(3) Plans for resources, team and procurement

A clear budget and plan for what resources are available and required for the investigation needs to be compiled. This will include the size and composition of the team to be deployed, roles of personnel (ensuring continuity where possible) and recruitment phase.⁴⁷ Consideration, where appropriate, should be given to the use of local investigators (including training needs) for long-term capacity building.

(4) Plans for safety and security

Safety of the site as well as physical and psychological security of personnel are paramount. Some sites might be too dangerous for excavation⁴⁸ or unsafe due to adverse weather conditions. Specialist assistance might be needed with hazards such as toxins, landmines and improvised explosive devices (IED). In addition to on-site safety, thought should be given to safety during transportation of personnel to and from the site and whilst conducting liaison work.

(5) Plans for scope, scale and sequencing

The scope, including timescales and parameters, for an investigation will include considerations of scale and sequencing of mass grave excavations and analysis.

(6) Plans for Standard Operating Procedures and reporting

The use of Standard Operating Procedures, universally accepted evidentiary standards and protocols for the treatment/handling of evidence and recording will ensure quality, consistency and transparency of processes, and need to be agreed. In addition, a system for quality control should be prepared for implementation.

(7) Plans for extraneous factors

Contamination, commingling and third party 'excavation' may impact the planning phase.

⁴¹ Geneva Academy and International Committee of the Red Cross (ICRC) (2019), Guidelines on investigating violations of international humanitarian law: law, policy, and good practice.

⁴² International Criminal Court (2008), Code of Conduct for Investigators, ICC/AI/2008/005 section 4.1.

⁴³ The Minnesota Protocol, for example, has a section on Interviews and Witness Protection including a Detailed Guideline on Interviews (at section V, B, pages 33-35).

⁴⁴ This will depend on institutional set-up, jurisdiction and mandate.

⁴⁵ See Appendix 2 on disciplines and experts that may form part of the team. For information on management roles as part of Disaster Victim Identification see Annexure 8: DVI Management Roles of Interpol's Disaster Victim Identification Guide.

⁴⁶ General provision for the conduct of an investigation into potentially unlawful deaths can be found in the Minnesota Protocol section IV on the conduct of an investigation (at pages 12-15). Further guidelines on crime scene investigation can be found within the Minnesota Protocols at section V pages 30-32.

⁴⁷ Procedures to safeguard relevant experience, expertise and suitability as well as back-up supply chains may form part of this.

⁴⁸ UNAMI and OHCHR (2018) Unearthing Atrocities: Mass graves in territory formerly controlled by ISIL.

(8) Plans for disposition, data storage, preservation and protection

In line with the investigative scope, the disposition (use and disposal) of reference samples, samples from body parts and associated evidence, should be established. Clear structures need to be in place for all data, including its storage, data protection and preservation, in line with domestic data provisions of the State but also cognisant of international provisions.⁴⁹

(9) Plans for return of human remains processes and/or post-exhumation storage

Before the exhumation begins, there should be a clear strategy for the return of human remains processes and, in case of non-identification, dignified storage or burial arrangements.

(10) Plans for communication strategy (including the use of imagery) and co-ordination

(10.1) Internal communication, co-ordination and appropriate implementation plan.

(10.2) External communication and co-ordination between the investigation team and the judicial prosecutorial authorities; particularly where human identification efforts are separate from national or international prosecutorial bodies.

(10.3) External communication and co-ordination between the investigation team and the victims, families, communities and media liaison. Early and ongoing communication is essential to the development of legitimacy support for and engagement with the exhumation process. This will include reassurance that mortal remains will be treated with care, dignity and respect, and kept safe. This in turn is vital to the realisation of the identification and return mission, and is supportive of trust in the law and acceptance of judicial findings.

All public communication should be accurate, unambiguous, regular and timely. It should include information on:

- The recovery and return of human remains process;
- Existence (and content, where appropriate) of protection and confidentiality protocols/measures;
- Death certification;
- Availability of appropriate psychosocial support for families; and
- Should seek to manage expectations.

The forensic investigative approach

In line with the planning stages above, the forensic investigative approach will require the following:

(1) Use of Standard Operating Procedures

At all times and at all stages, agreed Standard Operating Procedures⁵⁰ should apply. This will safeguard the integrity of the investigation (especially in relation to identity of the victims, recovery and preservation of all evidence relevant to the identity, cause, manner, time, place of death, movement and disturbance of human remains as well as the identity of perpetrator(s)).

(2) Use of quality control mechanisms

A quality control mechanism will ensure all Standard Operating Procedures are adhered to.

(3) Use of appropriate evidence handling, recording, reporting and preservation system

This will include appropriate, secure and dignified retrieval and transportation of human remains, and measures to avoid contamination. All evidence (into cause, manner and time of death, demographic details, total number of individuals as well as identities) should be preserved, recorded, expertly analysed and reported, whilst maintaining a clear chain of custody for identification and potential accountability processes.

(4) Use of communication strategy

To facilitate the effective engagement with outreach and family liaison and, where appropriate, co-ordination with the prosecutorial/judicial institutions and media.

⁴⁹Such as the Universal Declaration on Bioethics and Human Rights (UNESCO 2005), concerning research in medicine, life sciences and associated technologies, including genetics; the International Declaration on Human Genetic Data (UNESCO 2003), concerning the collection, processing, use and storage of human genetic data and samples; the Universal Declaration on the Human Genome and Human Rights (UNESCO 1997), concerning research, treatment or diagnosis affecting an individual's genome; the Convention on Human Rights and Biomedicine, Oviedo Convention (Council of Europe 1995), protecting the dignity and identity of human beings with regard to biology, medicine, biomedical research and genetic testing. See also aaBB Advancing Transfusion and Cellular Therapies Worldwide (2010), Guidelines for Mass Fatality DNA Identification Operations for information on disposition in the context of identification efforts (at page 11).

⁵⁰Such as the Minnesota Protocols and in particular its Detailed Guidelines on the Excavation of Graves, at section C pages 36-37.

D. Identification

International norms

Article 15 of the CED stipulates: 'State Parties shall co-operate with one another and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in **exhuming and identifying** them and returning their remains' (emphasis added). Information also needs to be communicated to persons with legitimate interest in such information, such as relatives (ibid, Article 18). And Article 24(3) of the CED requires the return of human remains. States are under an obligation to provide documentary information on the deceased person⁵¹ and to allocate the necessary resources for excavation of burial sites including the collection, storage and identification of human remains.⁵² Issuing a death certificate is of major importance.⁵³

Further, in the case of the *Pueblo Bello Massacre v Colombia* the Inter-American Court suggested the State should urge the public to come forward with information that might assist with the identification of victims.⁵⁴ The value of DNA analysis as a primary means of identification is recognised (The ICMP Paris Principles, Principle 6).⁵⁵

Customary international humanitarian law provides that parties to the conflict (whether international or non-international) return the remains of the dead upon request (CIHL Rule 114). In addition, '[e]ach party to the conflict must take all feasible measures to account for persons missing as a result of armed conflict and must provide their family members with any information it has on their fate' (CIHL Rule 117).

The ICRC expands on this position: 'Once the fate of a missing person has been determined to be death, all available means must be undertaken to ensure recovery of the body and any personal effects' (ICRC Model Law on the Missing, Article

19). The provisions also cover the required burial, exhumation and commemorative practice and how to treat unidentified human remains, requesting that records are kept, identification efforts continue and the family be kept informed.

Whilst identification forms a crucial aspect of investigations and the realisation of rights, it is commonly understood as an obligation of means.⁵⁶ The identification of human remains is a precondition for the return of remains to families to facilitate commemorative practices but also for the family to receive a death certificate.⁵⁷

On-site requirements:

Recovery, recording and custody of human remains and associated evidence should comply with the provisions outlined in the section on investigation.

Off-site efforts:

Post-mortem examination⁵⁸ and associated evidence is undertaken in the mortuary. Such work typically requires specific planning and allocation of additional resources. In addition, the following is required:

- Maintenance of a clear chain of custody for identification and accountability processes;
- Sufficient facilities for the storage and preservation of human remains; and
- Capacity for families visiting the mortuary to identify and/or view associated evidence.

Missing persons data collection including family reference DNA samples are required to generate information to facilitate identification. This data must be collected in a sensitive manner that protects the rights of survivors and the deceased. Such practices relating to personal data, genetic information and storage of such information must conform with domestic data provisions and be cognisant of international standards.

⁵¹ *The Massacres of El Mozote and other Places v El Salvador*, Judgment on Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No 252 (25 October 2012) para 334.

⁵² *Aslakhanova and others v Russia*, Judgment, ECtHR Application Nos 2944/06 and 8300/07, 50184/07, 332/08, 42509/10 (18 December 2012) para 226.

⁵³ The issuing and processing of death certificates was at the heart of the UN Convention on the Declaration of Death of Missing Persons after the World War II (1939-1945) which was in force until 1972. The ICRC Model Law on the Missing explains in its commentary to Article 4 'In the event of death, there is an obligation to provide a death certificate, to handle the human remains with respect and dignity, as well as to return the body to the family and/or to ensure burial' (at page 12) and should be performed by the competent authority (at page 44). Further, death certificates are identified in the ICRC's Management of Dead Bodies after Disasters: A Field Manual for First Responders, for example, at page 30; and Interpol, Disaster Victim Identification, at 5.4. Phase 4: Reconciliation, at page 17.

⁵⁴ *Pueblo Bello Massacre Colombia*, Judgment on Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No 140 (31 January 2006) para 272.

⁵⁵ *International Commission on Missing Persons* (2019), The ICMP Paris Principles, Annotated Version, ICMP.DG.468.1.W.doc.

⁵⁶ Though Interpol's Disaster Victim Identification Guide suggests a more categorical approach through stating: 'Victims have a right to identity after their death' (Part B, Annex 2, White Paper - DVI).

⁵⁷ An exception is Argentine Law No. 14,321 of 11 May 1994 which creates a category of forcibly disappeared as a legal equivalent to a death for civil purposes. It allows families to process wills, deal with the estate of the disappeared and inheritance matters, but the possibility of 'reappearance' of the individual remains open. Such a declaration inherently acknowledges State involvement or responsibility for the individual's death (unlike a mere death certificate).

⁵⁸ For example, in line with the Minnesota Guidelines on Autopsy offering guidance on autopsies, dental examination and anthropological analysis of skeletal remains, as contained in Guideline E on pages 49-51 as well as Annexes 1-5, pages 57-87 offering forms. These may take place in secure temporary mortuary facilities.

A data management system to match up all aspects of data collection and analysis is also an off-site requirement to facilitate identification. As a minimum, this will include:

- A registry of missing persons and associated information;
- Information including DNA reference samples from families of the missing;
- Data on forensic archaeology operations and recovery of human remains and associated evidence;
- Anthropological examination and case inventory;
- DNA laboratory processes;
- DNA profile database; and
- DNA matching.

DNA processing capacity need not exist in-country because it may be available through third party organisations able to provide DNA testing assistance on a large scale.

The **communication strategy** will facilitate:

- Explanation of processes and timeframes of identification and data-processing to family members and the wider community to generate acceptance;
- Keeping families informed of the decisions in relation to post-mortem examinations, and the results of any such examination. This should include information on family support and referral options;
- Effective communication with agencies that may hold and provide complementary information;
- Effective communication with the media that respects the privacy rights of affected families, recognises the families' sensitivities and right to know results before communication to the media.

Potential outcomes of identification efforts

(1) Positive identification: is ascertained where there is consistency between a missing person's ante-mortem and post-mortem data and there are no discrepancies that cannot be explained.

Scientifically reliable methods of identification including fingerprints, dental examination, a biological profile through anthropological examination where remains are skeletonised, and DNA analysis should be employed.

Visual recognition (including from photographs), personal description, tattoos, property and clothing found on the body as well as medical findings may serve to support identification but should be avoided as sole identifier.⁵⁹

Where identification has been ascertained, the appropriate authority should issue a **death certificate**⁶⁰.

(2) Identification has not been ascertained: where, for example, evidence supports the exclusion of a particular hypothesis about the identity of the human remains, or where there is no conclusion about the identification of the human remains.⁶¹

A record should be kept active in order to allow future identification and subsequent notification to relatives and interested parties, including state authorities.

Preservations and longer-term storage measures are needed to safeguard the prospect of future identification. Where preservation and storage measures are unavailable or inappropriate, unidentified human remains may be buried in marked graves according to the likely cultural or appropriate religious customs of the deceased.⁶²

In order to ensure the possibility of identification in the future cremation should, wherever possible, be avoided.

Traceability of remains should be ensured through methods such as:

- Documentation and mapping of the site, including mapping of the location of individual bodies within the site;
- Numbering and tagging of each body and bag/coffin with reference to DNA sample number and storage;
- The use of signs to mark the site;
- The safe storage of information to ensure its security.

(3) Misidentification: where there is an error in attributing identity to human remains. Such misidentification will have adverse effects on the two sets of families involved as well as the investigation.

Discovery of such an error should trigger appropriate family liaison and support as well as corrective action in line with the Standard Operating Procedures.

Family rights in cases of non-identification

In the case of non-identification, the surviving family members nonetheless may require some certificate to prove the absence of the loved ones enabling them to claim other rights or to proceed with the sale of assets, inheritance, remarriage etc. A missing status or certificate of absence should be issued to safeguard the families' rights.⁶³

⁵⁹See Methods of Identification (Primary and Secondary) as part of the Interpol's Disaster Victim Identification Guide at page 18; Interpol's Disaster Victim Identification Guide Annexure 12 on Methods of Identification and Minnesota Protocol, section E on Identification of Dead Bodies, pages 21-24.

⁶⁰ As, for example, Model certificate of death in Annex 2 of ICRC /Model Law on the Missing.

⁶¹ See Minnesota Protocol, section E on Identification of Dead Bodies, page 24.

⁶² Such burial of unclaimed and unidentified remains is deemed appropriate by the Mytilini Declaration concerned with the dignified treatment of missing and deceased persons and their families as a consequence of migrant journeys (The Mytilini Declaration for the Dignified Treatment of all Missing and Deceased Persons and their Families as a Consequence of Migrant Journeys (2018) at A.16). The ICRC Model Law on the Missing in its commentary to Article 22 (Burial and exhumation) states '[c]remation should be avoided, except where necessary (e.g. for reasons of public health) and a record of the reason for it kept, as well as the ashes' (at page 48).

⁶³ Similar to the Missing Persons category in Argentina and Colombia's Law 1531 on the Declaration of Absence of Missing Persons, 2012, Article 7. Under international law the legal status of the or disappeared missing person and their relatives is not regulated but the CED provides in Art 24(6) 'Without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, each State Party shall take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.'

E. Return of human remains

International norms

Article 24(3) of the CED reiterates the obligation to return human remains of the disappeared to surviving family members; with Article 15 requiring States to offer co-operation and assistance to one another in search and repatriation efforts.

Principle 2(4) of the 2019 Guiding Principles specifies that the 'return [of human remains] should also involve the means and procedures needed to ensure a dignified burial consistent with the wishes and cultural customs of the families and their communities.' This would include covering the costs for cross-border transfer of the human remains.

Jurisprudence from the Inter-American Court of Human Rights states: 'When the mortal remains are found and identified, the State must return them to their next of kin as soon as possible, after having proved the relationship genetically, so that they can be honored according to their respective creeds. The State must also cover the burial expenses, in agreement with the next of kin.'⁶⁴

Non return of human remains and burial in unspecified locations would constitute a violation of the right to family and private life; an interference only permissible where it accords with the law, is in pursuit of a legitimate aim (such as public safety, prevention of disorder or rights and freedoms of others) and is necessary in a democratic society.⁶⁵

In international humanitarian law, 'the return of human remains upon request by a party or the next of kin, as a sign of respect for family life and regards for survivor rights, is applicable during international and non-international armed conflict' (CIHL, Rule 114).

ICRC Model Law on the Missing Article 21(4) stipulates that '[h]uman remains and personal effects shall be returned to the families'.

Upon completion of the investigation, identification and justice processes, human remains, associated body parts and personal artefacts should be returned to family members, allowing them to dispose of the deceased in line with their beliefs.

Where identification and the return of human remains is possible:

- After post-mortem examination, the remains should be released to the family at the earliest time possible.
- A process for the return of human remains should be implemented and followed. It should include an appropriate communication strategy, and, where possible, the offer of, or referral to, resources for assistance to the bereaved families and communities.

Where a body has been identified but has not been claimed by a family member:

- The human remains and all associated records can be stored/preserved; OR
- The human remains can be buried in marked graves according to the cultural or appropriate religious customs of the deceased and the associated records can be stored.

Whatever the preferred option, plans should encompass provision for the traceable, long-term storage or disposal of dead bodies. Plans should be culturally appropriate, and consideration should be given to the location of reburial as a site of significance and memorialisation for families and communities. Additional practicalities will include issues of land ownership, prevailing soil conditions and the height of the groundwater table within the intended area.

As with unidentified bodies (see above, section D on identification), and to enable rectification of mistaken identification and the erroneous return of human remains, traceability should be ensured through methods such as:

- Documentation and mapping of the site, including mapping of the location of individual bodies within the site;
- Numbering and tagging of each body and bag/coffin with reference to DNA sample number and storage;
- The use of signs to mark the site; and
- The safe storage of information to ensure its security.

Cremation should be avoided.

Associated body parts and evidence

Culturally appropriate ways for dealing with unclaimed personal artefacts and unidentified or unclaimed body parts should be agreed upon with the affected communities.⁶⁶ This might include memorialisation, sensitive displays, burials, designated commemoration areas or ossuaries.

⁶⁴ *Pueblo Bello Massacre Colombia*, Judgment on Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No 140 (31 January 2006) para 273.

⁶⁵ *Sabanchiyeva and others v Russia*, Judgment, ECtHR Application No 38450/05 (6 June 2013) paras 117-134.

⁶⁶ Interpol's Disaster Victim Identification Guide, Annexure 17: Roles and Responsibilities of the Forensic Anthropologist for DVI suggests 'a final forensic anthropological review and check of the physical remains in events with fragmented and/or compromised remains. Prior to the release of the remains to the next of kin, a final anthropological review adds an additional layer of verifiable quality assurance and control that serves to maintain a high level of trust with the victims' families' (at page 3).

F. Justice

International norms

a. The provision of information:

The right to the truth is grounded in Articles 32 and 33 of Additional Protocol I of the Geneva Conventions, incorporated into a human rights convention (CED Preamble and Article 24(2)), jurisprudence⁶⁷ and elaborated in soft law. The right encompasses the need of victims, families and societies to know the truth about past events, together with the circumstances and reasons that led to the perpetration of those crimes (Orentlicher Principles, Principle 2). In the case of death or enforced disappearance, the right to the truth includes the right of families to know the fate and whereabouts of loved ones. Societal learning and knowledge also entail a duty on the State to preserve the collective memory of events (Orentlicher Principles, Principle 3).

b. Remedies:

For victims and their families, international law through the 2005 Basic Principles and Guidelines and the CED (at Articles 24(4) and 24(5)) provide a number of potential remedies:

- Compensation;
- Restitution;
- Rehabilitation;
- Satisfaction (including the verification of facts and/or search, recovery, identification and burial) and;
- Guarantees of non-repetition (through, for example, codes of conduct, education and training).⁶⁸

In the pursuit of a remedy⁶⁹ victims have the right to:

- Equal and effective access to justice;
- Adequate, effective and prompt reparation for harm suffered, including psychological care for the next of kin⁷⁰; and
- Access to relevant information concerning violations and reparation mechanisms.

This has found expression in the Mapiripán Massacre case: 'during the investigative and judicial processes, the victims of human rights violations, or their next of kin, must have ample opportunity to participate and be heard, both regarding elucidation of the facts and punishment of those responsible, and in seeking fair compensation'.⁷¹

c. Prohibition and punishment or extradition:

Genocide, grave breaches of the Geneva Conventions, torture and enforced disappearances are prohibited by treaty, and State Parties are required to enact domestic legislation to provide effective penalties where abuses occur (see Genocide Convention Article 5; GC I Article 49; GC II Article 50; GC III Article 129; GC IV Article 146; UNCAT Articles 2 and 4; CED Article 6; and ICCPR Article 6 in relation to genocide). Following the deprivation of life, the duty to investigate includes 'the identification and, if appropriate, punishment of those responsible'.⁷² The CED-Guiding Principles specify that 'the search for the disappeared person and the criminal investigation of the persons responsible for the disappearance should be mutually reinforcing' (Principle 13(1)).

The Geneva Conventions require State Parties to actively search for alleged perpetrators in order to bring them to trial (GC I Article 49; GC II Article 50; GC III Article 129; GC IV Article 146).

d. Promulgation:

In line with the remedial rights of victims, as a fair expectation of a democratic society and as a measure to enhance respect for the rule of law, the results of any investigation should be fully promulgated.⁷³

The discovery and investigation of a mass grave site may occur within the broader context of widespread human rights abuses or violations of international humanitarian law. In such situations, the justice needs of individuals, communities, States and the international community can be both exponential and conflicting. They can include the need for and/or right to collective repair and healing, accountability, societal cohesion, trust and reconciliation.

⁶⁷ For an early decision see *Velásquez Rodríguez v Honduras*, Judgment on Merits, Inter-American Court of Human Rights Series C No 4 (29 July 1988), para 177. The right to the truth requires an authoritative investigation into the individual human rights abuse as well as the socio-political context leading to the abuse(s); it entails an element of victim participation in the process and the promulgation of the investigative results to benefit society and the individual.

⁶⁸ As defined in the UNGA, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Principles 19-23.

⁶⁹ Basic Principles, Principle 11.

⁷⁰ *Pueblo Bello Massacre v Colombia*, Judgment on Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No 140 (31 January 2006) para 274.

⁷¹ *Mapiripán Massacre v Colombia* Judgment on Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No 134 (15 September 2005), para 219.

⁷² *Kukhalashvili and others v Georgia*, Judgment, ECtHR Application Nos. 8938/07 and 41891/07 (2 May 2020), para 129. See also *Pueblo Bello Massacre v Colombia*, Judgment on Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No 140 (31 January 2006) para 265-269 on the obligation of the State to investigate the facts of a case and, where relevant, identify, prosecute and sanction those responsible.

⁷³ *Las Dos Erres' Massacre v Guatemala*, Judgment on Preliminary Objections, Merits, Reparations and Costs, IACtHR Series C No 211 (24 November 2009) paras 256-264 and *El-Masri v the Former Yugoslav Republic of Macedonia*, Judgment Grand Chamber Judgment, ECtHR Application No 39630/09 (13 December 2012), para 192 and Joint Concurring Opinion of Judges Tulkens, Spielmann, Sicilianos and Keller.

(1) The provision of information: Knowing what happened through investigation processes is a precondition for the realisation of justice needs. Mass grave investigation and exhumation, through the information they reveal, can contribute to the achievement of truth and be a precursor for justice goals at a number of levels.

In particular, the results of mass grave investigation and documentation can assist in providing:

- Information about the events leading to the human rights abuse;
- The return of human remains for commemoration purposes, and the resulting issuance of a death certificate (or equivalent) to safeguard the economic survival of a family, including education and health needs;
- The identification of the victim as well as survivors; and
- The identification of perpetrators.

(2) Remedies: From this information, other justice, reparative rights and legal claims can be met to:

- Facilitate reparation, including official recognition, compensation, satisfaction and memorialisation;
- Lodge applications under domestic, regional and/or international human rights provisions; and
- Advance criminal prosecutions.

(3) Prohibition and punishment or extradition: Mass grave investigations and criminal investigations aimed at perpetrator accountability should be mutually reinforcing, and clear communication channels with prosecuting/judicial authorities are essential.

The particular value of mass grave investigations for judicial processes can include:

- Corroboration of witness accounts;
- Number of deaths;
- Cause, manner and date/time of death;
- Sex, age and ethnicity of victims;
- Identity of victims;
- Attempts to hide the crime by moving bodies from primary to secondary graves; and
- Evidential links to perpetrators.⁷⁴

Completion of any judicial investigation and prosecution process should not adversely affect the continuation of mass grave investigation and protection efforts.

(4) For State efforts aimed at justice and accountability, independent and authoritative reporting of investigative results, as an integral part of an investigation process, can contribute towards the realisation of the victim's right to know what happened, collective memory and support for

the rule of law. The results of mass grave investigations should therefore be publicly reported, unless doing so would prejudice or jeopardise ongoing or future criminal prosecutions.

G. Commemoration

International norms

The right to bury family members is generally covered through the protection of private and family life.⁷⁵ The manner of burying the dead can form an essential aspect of religious practice as protected under freedom of thought, conscience and religion provisions.⁷⁶ In addition, the building of memorials to the deceased can form parts of guarantees of non-repetition efforts.⁷⁷ The Orentlicher Principles require that States preserve the collective memory of events (Orentlicher Principles, Principle 3).⁷⁸

CIHL Rule 115 states that 'the dead must be disposed of in a respectful manner and their graves respected and properly maintained'.

Mass graves can be complex, challenging and/or controversial features in the societal, political and geographical landscape.

When investigated and excavated, both the former mass graves and the newly created burial and commemoration places may become sites for individual and/or collective commemoration; expressions of cultural, religious and political practice; and form part of reparations.

Thereby mass graves can become sources for:

- Advancing historical memory;
- Contributing to the national discourse on the past;
- Psycho-social support systems;
- Influencing future policies; and/or
- Facilitating the basic condition of a just society.

Excavated mass graves may require subsequent legal recognition and protection as memorial sites.

Mass grave sites that cannot be investigated may also become sites of memorialisation and should be legally recognised and protected to the extent possible to ensure the integrity of evidence should the possibility of an investigation arise in the future.

⁷⁴As derived from ICTY experience and cases such as *Prosecutor v Mladić*, Judgment, IT-09-02-T-117281 (22 November 2017) and *Prosecutor v Karadžić*, Public redacted version of Judgment issued on 25 March 2016, IT-95-5/18-T (25 March 2016).

⁷⁵As expressed, for example, in *Sabanchiyeva and others v Russia*, Judgment, ECtHR Application No 38450/05 (6 June 2013).

⁷⁶*Johannische Kirche & Peters v Germany*, Decision, ECtHR Application No 41754/98 (10 July 2001).

⁷⁷For example, *'Las Dos Erres' Massacre v Guatemala*, Judgment on Preliminary Objections, Merits, Reparations and Costs, IACtHR Series C No 211 (24 November 2009), para 265 and *Pueblo Bello Massacre v Colombia*, Judgment on Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No 140 (31 January 2006) para 278.

⁷⁸Considerations for freedom of expression rights can arise in the context of such memorials or massacre sites as expressed in *Faber v Hungary*, Judgment, ECtHR Application No 40721/08 (24 July 2012) where the Court acknowledges 'that the display of a contextually ambiguous symbol at the specific site of mass murders may in certain circumstances express identification with the perpetrators of those crimes; it is for this reason that even otherwise protected expression is not equally permissible in all places and all times' (at para 58).

Appendix 1

Relevant guidelines, principles, handbooks, good practice manuals and protocols:

- aaBB Advancing Transfusion and Cellular Therapies Worldwide (2010), Guidelines for Mass Fatality DNA Identification Operations www.aabb.org/programs/disasterresponse/Documents/aabbdnamassfatalityguidelines.pdf
- Council of Europe (2011), Convention on preventing and combating violence against women and domestic violence, CETS 210 11.V.2011 www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210
- Cox, M et al. (eds) (2008), *The Scientific Investigation of Mass Graves: Towards Protocols and Standard Operating Procedures* (Cambridge University Press)
- Folke Bernadotte Academy and Swedish National Defence College (2011), Handbook on assisting international criminal investigations <https://fba.se/contentassets/6f4962727ea34af5940fa8c448f3d30f/handbook-on-assisting-international-criminal-investigations.pdf>
- Geneva Academy and International Committee of the Red Cross (ICRC) (2019), Guidelines on investigating violations of international humanitarian law: law, policy, and good practice www.icrc.org/en/document/guidelines-investigating-violations-ihl-law-policy-and-good-practice
- Global Rights Compliance (2016), Basic Investigative Standards for first Responders to International Crimes www.globalrightscpliance.com/en/publications/basic-investigative-standards-for-international-crimes
- International Bar Association: Human Rights Institute (2009) Guidelines on International Human Rights Fact-Finding Visits and Reports ("Lund-London Guidelines") www.ibanet.org/Fact_Finding_Guidelines.aspx
- International Commission on Missing Persons (ICMP) (2018), Guidelines for First Responders: Safeguarding known or suspected grave or body disposal locations, ICMP.ST.AA.857.1 www.icmp.int/wp-content/uploads/2018/10/icmp-st-aa-857-1-doc-guidelines-for-first-response-at-grave-or-body-disposal-locations.pdf
- ICMP (2019), The ICMP Paris Principles, Annotated Version, ICMP.DG.468.1.W.doc www.icmp.int/wp-content/uploads/2019/04/icmp-dg-1468-1-W-doc-paris-principles-annotated.pdf
- International Committee of the Red Cross (ICRC) (2009), Guiding Principles/Model Law on the Missing www.icrc.org/en/document/guiding-principles-model-law-missing-model-law
- ICRC (2016), Management of Dead Bodies After Disasters: A Field Manual for First Responders www.icrc.org/en/publication/0880-management-dead-bodies-after-disasters-field-manual-first-responders
- ICRC (2020), Accompanying the Families of Missing Persons - a practical Handbook <https://shop.icrc.org/accompanying-the-families-of-missing-persons-a-practical-handbook-pdf-en>
- International Criminal Court (2008), Code of Conduct for Investigators, ICC/AI/2008/005 www.icc-cpi.int/resource-library/Vademecum/Code%20of%20Conduct%20for%20Investigators.PDF
- Interpol, (2018) Disaster Victim Identification www.interpol.int/en/How-we-work/Forensics/Disaster-Victim-Identification-DVI
- Inter-Parliamentary Union and ICRC (2009), Missing Persons – A Handbook for Parliamentarians www.icrc.org/en/doc/assets/files/other/icrc_002_1117.pdf
- Public International Law and Policy Group (PILPG) (2015), Field Guide for Civil Society Investigation and Documentation of Gross Human Rights Violations www.publicinternationallawandpolicygroup.org/toolkits-and-handbooks
- United Nations Committee on Enforced Disappearance, Guiding Principles for the search for disappeared persons (8 May 2019) UN Doc CED/C/7 www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/CED/CED_C_7_E_FINAL.docx&action=default&DefaultItemOpen=1
- United Nations Office of the High Commissioner for Human Rights (2004), Istanbul Protocol - Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment www.ohchr.org/documents/publications/training8rev1en.pdf
- United Nations Office of the High Commissioner for Human Rights (2016), The Minnesota Protocol on the Investigation of Potentially Unlawful Death www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf
- United Nations Office of the High Commissioner for Human Rights (2001), Training Manual on Human Rights Monitoring www.ohchr.org/Documents/Publications/training7Introen.pdf

Appendix 2

Relevant investigative and forensic expertise may include the following actors or specialist disciplines:

The mass fatality manager assumes overall responsibility for the operational management of mass graves including, but not limited to, adherence to jurisdictional agreements and Standard Operating Procedures; maintenance of community liaison, health, safety and well-being on-site; implementation of reporting structures and communication strategy; and co-ordination of the identification and return of human remains process.

Crime-scene investigators and/or senior site officers are individuals trained in identifying, documenting, collecting and preserving physical evidence for further analysis whilst maintaining a chain of custody.

Digital data experts to examine and extract evidence and data from mobile phones, memory sticks, computers or social media.

Forensic anthropology is concerned with the recovery and examination of human remains (including decomposing, skeletonised, fragmentary or burned) to answer medico-legal questions, including those of identification.

Forensic archaeology denotes the use of methods employed in the study of ancient remains and objects for the purposes of the law, in order to record, excavate, recover, reconstruct and evaluate a crime scene.

Forensic ballistics/Firearms and toolmarks specialists

are concerned with the examinations of marks left on exhibits and the comparison of these with possible causative implements/tools/weapons, leading to conclusions of forensic value about gunshot wounds and the projectiles recovered from them.

Forensic entomology is the study of insects in a forensic setting, most often as part of forensic pathology, as an indicator of the minimum time since death.

Forensic odontology is the study of dentistry in relation to the law, in particular in the investigation of death, especially for the identification of human remains.

Forensic medicine refers to the principles and practice of medicine as applied to the needs of the law and the courts.

Forensic pathologist or forensic doctor is a certified medical specialist who is authorised to perform forensic post-mortem examinations.

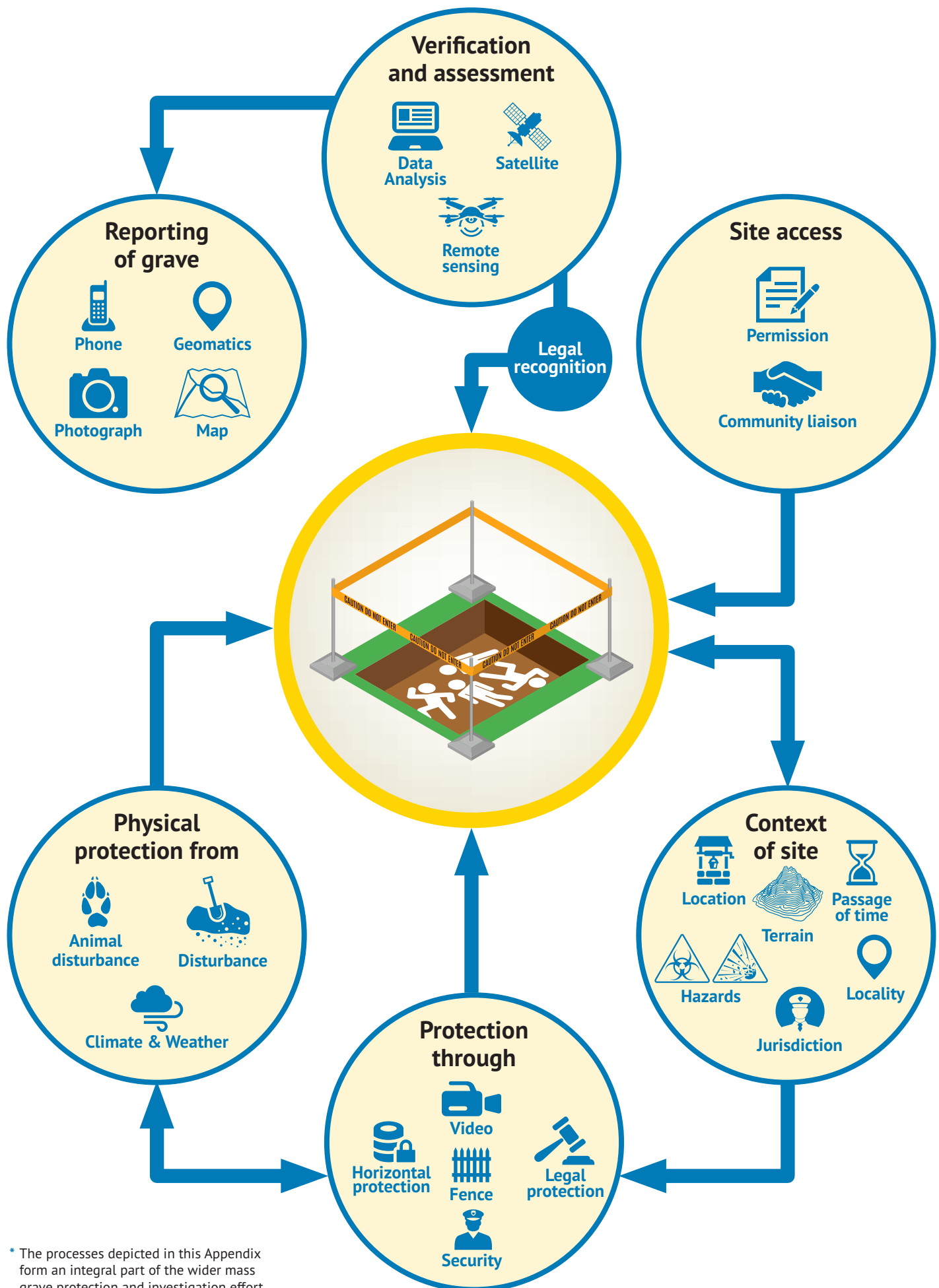
Forensic toxicology is the science of drugs and poisons applied to the needs of the law and the courts.

Human identification experts including geneticists, fingerprint experts, molecular biologists/forensic DNA experts, or forensic dentists.

(Source: adapted from Minnesota Protocols, page 30 and 53)

Each of these professions and/or practitioners will be governed by respective, appropriate code(s) of conduct. Their titles may vary.

Appendix 3: Discovery, reporting and protection*



* The processes depicted in this Appendix form an integral part of the wider mass grave protection and investigation effort.

Appendix 4: Investigation process*

Planning phase:

- 1 Which entity has overall responsibility for the missing persons effort?

Who should plan the mass grave investigation?



What is the investigation's scope?

What team members?



What additional authorities are involved and required?



What other investigative activities?



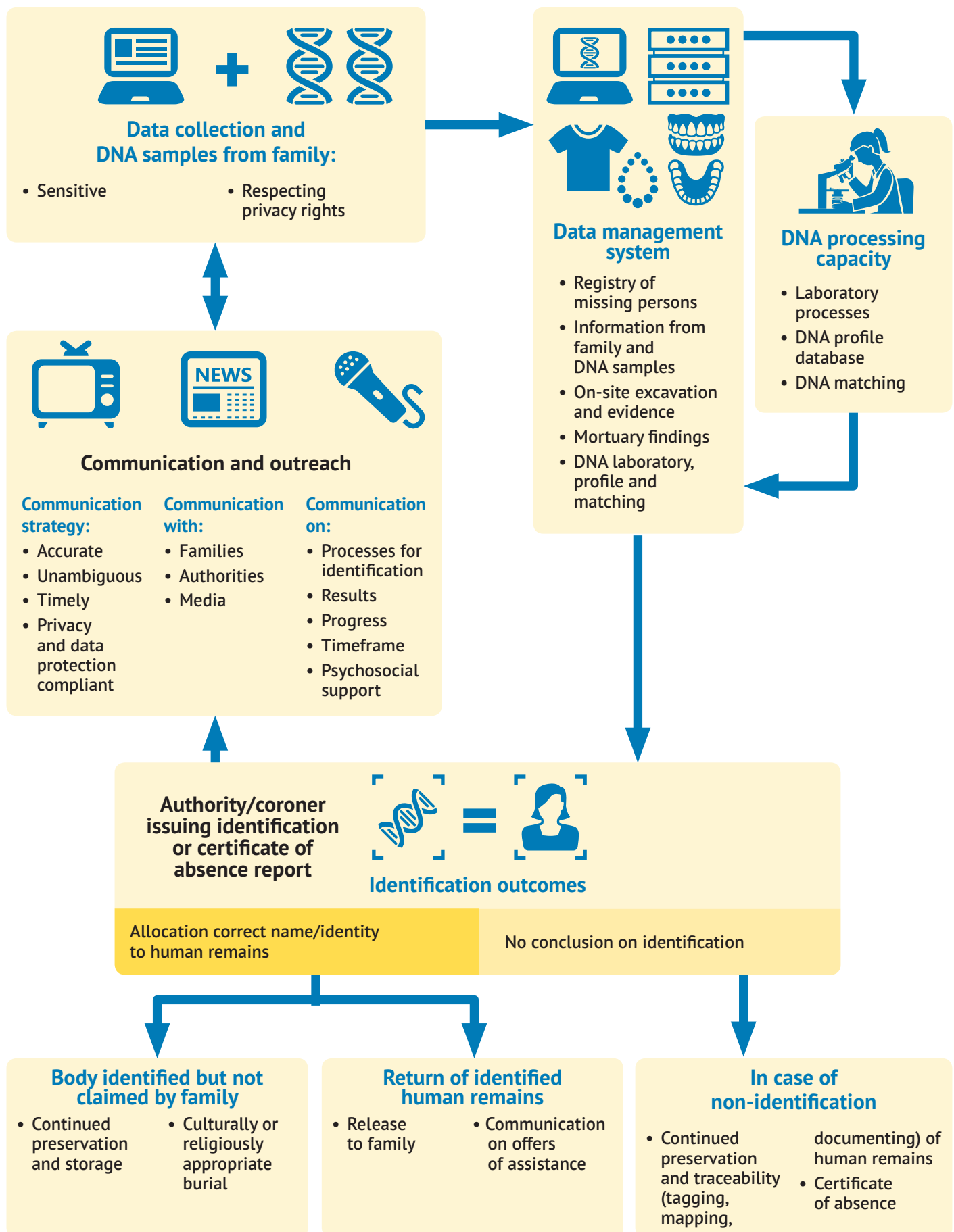
- 2 Community access and impact
- 3 Resources, team and procurement
- 4 Safety and security
- 5 Scope, scale and sequencing
- 6 Adoption of Standard Operating Procedures
- 7 Extraneous factors and context
- 8 Disposition, data storage, preservation and protection
- 9 Return of human remains and/or post exhumation storage
- 10 Communication strategy
 - 10.1 Internal
 - 10.2 External between team and authorities
 - 10.3 External between team, families, community and media

Forensic investigative phase:

- 1 Use of Standard Operation Procedures
- 2 Evidence handling, recording and preservation system
 - Retrieval
 - Transportation
 - Evidence log
 - Recording
 - Chain of custody
 - Preservation
- 3 Quality control mechanisms
- 4 Link to the communication strategy and communication team

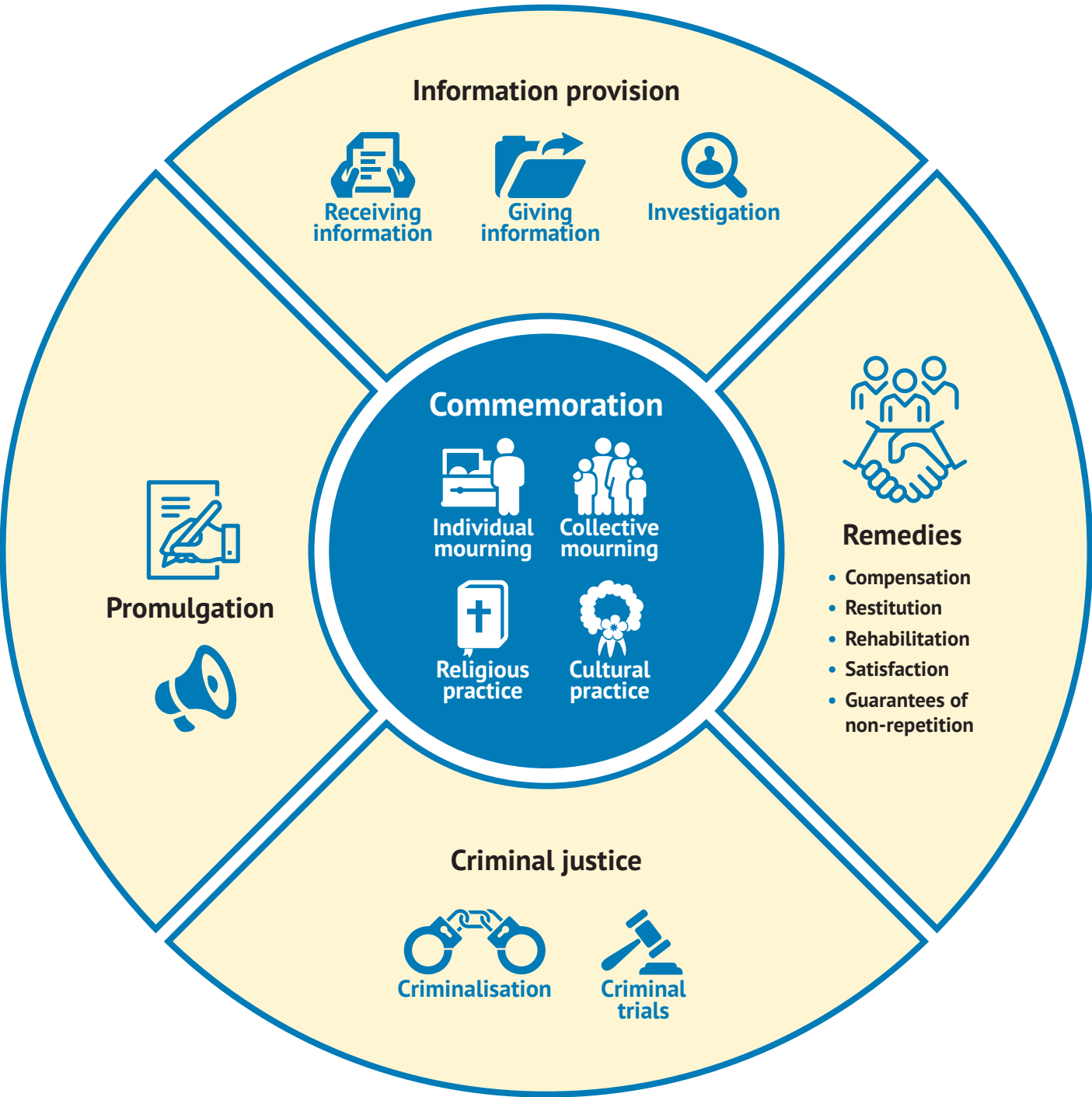
* The processes depicted in this Appendix form an integral part of the wider mass grave protection and investigation effort.

Appendix 5: Identification efforts*



* The processes depicted in this Appendix form an integral part of the wider mass grave protection and investigation effort.

Appendix 6: Truth, justice and commemoration*



* The processes depicted in this Appendix form an integral part of the wider mass grave protection and investigation effort.

Authors

Dr Melanie KLINKNER

Principal Academic in International Law, Department of Humanities & Law, Bournemouth University

Dr Ellie SMITH

Researcher, Department of Humanities & Law, Bournemouth University and Principal Associate at Global Security and Disaster Management Ltd

Expert-participants of the round-table discussions

Esma ALICEHAJIC

Forensic Archaeologist and Anthropologist, International Committee of the Red Cross

Sareta ASHRAPH

Barrister, Garden Court Chambers; Director, Office of Field Investigations for the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL; Senior Adviser on accountability efforts related to crimes committed in Syria and Iraq; Visiting Fellow at the Blavatnik School of Government, University of Oxford

Caroline BARKER

Forensic Archaeologist and Anthropologist, Chief of Section, Senior Forensic Anthropologist, United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD)

Dr Denis BIKESHA

Dean of the School of Law, University of Rwanda

Claudia BISSO

Forensic Anthropologist, Missing Person's Task Team of South Africa and member of the Argentine Forensic Anthropology Team (EAAF)

Dr Agnes CALLAMARD

United Nations Special Rapporteur on Extra judicial, Summary or Arbitrary Executions

Tina GAENTZLE

Criminal Intelligence Officer, Fugitive Investigative Support/Core International Crimes, INTERPOL

Alistair GRAHAM

Investigations Team Leader, International Criminal Court

Dr Ian HANSON

Archaeologist and expert witness for international investigations and former Director of the Archaeology and Anthropology Division at the International Commission on Missing Persons; Fellow of The American Academy of Forensic Sciences; Visiting Research Fellow at Bournemouth University

Carolyn HORN

Senior Advisor to the Special Rapporteur on Extra judicial, Summary or Arbitrary Executions

Andreas KLEISER

Director for Policy and Co-operation, International Commission on Missing Persons

Dr Alessandra LA VACCARA

Program Manager of the Missing Migrants and Refugees Program, International Commission on Missing Persons

Dean MANNING

Former investigator for the International Criminal Tribunal for the Former Yugoslavia, member of the MH17 Joint Investigations Team, and Team Leader of the Canberra Assets Confiscation Taskforce.

Peter MCCLOSKEY

Senior Trial Attorney in the Office of the Prosecutor at the International Criminal Tribunal for the Former Yugoslavia (retired)

Sir Howard MORRISON

British Lawyer and Judge at the International Criminal Court and, formerly, the International Criminal Tribunal for the Former Yugoslavia

Dr Claire MOON

Associate Professor in the Department of Sociology, London School of Economics and research lead for the project 'Human Rights, Human Remains: Forensic Humanitarianism and the Politics of the Grave'

Mark MUELDER

Co-ordinator of INTERPOL's Disaster Victim Identification unit

Gauri PRADHAN

Former Commissioner (Member) and Spokesperson for the National Human Rights Commission (NHRC), a national constitutional body of Nepal

Stefan SCHMITT

International Forensic Program Lead at Florida International University's National Forensic Science and Technology Centre, member of Physicians for Human Rights and founder of the Guatemalan Foundation for Forensic Anthropology

Ali SIMOQY

Independent researcher, human rights activist and member of the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD)

Dr Deborah RUIZ VERDUZCO

Head of Civil Society Initiatives, International Commission on Missing Persons

Rupert SKILBECK

Director of non-governmental organisation REDRESS, barrister and former Litigation Director at the Open Society Justice Initiative

Members of the Steering Group

Professor Roger BROWNSWORD

Professor in Law at Kings College London and Bournemouth University

Professor Louise MALLINDER

Professor of Law at Queen's University Belfast

Professor Dinusha MENDIS

Professor of Intellectual Property and Deputy Dean for Research and Professional Practice at Bournemouth University

Dr Annelen MICUS

Head of Programmes of the Bonavero Institute of Human Rights at University of Oxford

The authors are grateful for the numerous experts who participated in the anonymous consultation phase and whose feedback and input has been invaluable for the development of this document.



Arts & Humanities
Research Council

The project is funded by the UK's Arts and Humanities Research Council. The Arts and Humanities investigate the values and beliefs which underpin both who we are as individuals and how we undertake our responsibilities to our society and to humanity globally.