



## Submissions to the United Nations Committee Against Torture to inform its adoption of a list of issues prior to reporting for the Russian Federation at its 70<sup>th</sup> Session

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25 January 2021

### Introduction

1. These submissions are communicated by the European Human Rights Advocacy Centre ['EHRAC'] and Memorial Human Rights Centre ['MHRC'] to the United Nations Committee Against Torture ['the Committee'] to inform its adoption of a list of issues prior to reporting for the seventh periodic review of the Russian Federation ['the State party'] pursuant to the International Convention against Torture and Cruel, Inhuman and Degrading Treatment or Punishment ['the Convention']. They focus on the lack of progress the State party has made since the Committee's last periodic review in determining the fate of those disappeared by Russian security forces within the Chechen Republic (and wider North Caucasus region) ['the Region'] between the years 1999 - 2006.
2. In its concluding observations on the sixth periodic review of the State party, the Committee called on the State party to effectively investigate past human rights violations, including enforced disappearances and extrajudicial killings, in the North Caucasus.<sup>1</sup> Previously, in 2012, the Committee had called on the State party to investigate past violations in the Region and to regularly inform family members of the disappeared persons of the progress of the investigations including any progress made in the location and identification of remains.<sup>2</sup>
3. To date no meaningful progress has been made by the State party in effectively investigating enforced disappearances and extrajudicial killings perpetrated between 1999 – 2006 by Russian security forces within the Region.<sup>3</sup>
4. In light of these systemic failures we urge the Committee to view the State party's systemic failure to effectively investigate the disappearances as a form of ongoing torture, cruel, inhuman and degrading treatment against the relatives of the

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<sup>1</sup> United Nations Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Concluding observations on the sixth periodic report of the Russian Federation*, 28 August 2018, CAT/C/RUS/CO/6 para 47(a).

<sup>2</sup> United Nations Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Concluding observations on the sixth periodic report of the Russian Federation*, 11 December 2012, CAT/C/RUS/CO/5 para 13.

<sup>3</sup> While similar violations have occurred post-2006 and continue to occur in the Region we focus our submissions on this group of cases to highlight the prolonged nature of the suffering of the family members of the disappeared, the systemic nature of the State party's failure to remedy the violations, and to ensure they are duly treated as ongoing violations of the rights enshrined in the Convention.



disappeared requiring an urgent humanitarian resolution led by a specialised team of international and local forensic experts.

5. The scientific basis and urgent need for humanitarian resolution has already been raised before the Committee of Ministers of the Council of Europe ['CoM'] by representatives of the families of disappeared persons whose cases have already been heard and decided upon by the European Court of Human Rights ['ECtHR]. The particular wishes of many families in this category have also been provided to the CoM [Annex I].<sup>4</sup> On 3 December 2020, the CoM urged the State party to consider creating a specialised humanitarian body who would be able to gain the trust of victims and family members.<sup>5</sup>
6. Many of the family members of the disappeared persons have also filed individual cases before the UN Working Group on Enforced and Involuntary Disappearances ['WGEID'] in pursuit of humanitarian resolution. EHRAC and Memorial, as representatives of these applicants, have filed a General Allegation to WGEID regarding the State party's systemic failure to investigate enforced disappearances and calling on WGEID to continue to maintain pressure on the State party by promoting collaboration among UN and regional mechanisms. In response WGEID has issued a further country visit request to which there has been no response by the State party.<sup>6</sup> Within the remit of WGEID's mandate, such a visit would include a focus on humanitarian resolution.
7. Within this context we urge the Committee to consider adopting and transmitting to the State party the list of questions set out below which focus on the steps necessary for humanitarian resolution.

## Background

8. Estimates indicate that more than 5,000 people were disappeared by the State party in the region between 1999 and 2006.<sup>7</sup> The ECtHR has to date passed down

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<sup>4</sup> Stichting Justice Initiative, *Communication from a NGO (Stichting Justice Initiative) (18/11/2019) in the case of KHASHIYEV and AKAYEVA v. Russian Federation (Application No. 57942/00)*, 18 November 2019, DH-DD(2019)1425.

<sup>5</sup> Council of Europe Committee of Ministers, Decision on the H46-21 Khashiyev and Akayeva group v. Russian Federation (Application No. 57942/00), (Adopted by the Committee of Ministers on 3 December 2020 at the 1390<sup>th</sup> meeting of the Ministers' Deputies) para 7.

<sup>6</sup> WGEID has requested country visit from the Russian Federation on 4 June 2008, 20 July 2009, 18 August 2011, 8 November 2012, 2 September 2013, 18 November 2016 and, most recently, 18 January 2019. United National Office of the High Commissioner, View Country visits of Special Procedures of the Human Rights Council since 1998 (webpage) available at: <https://spinternet.ohchr.org/ViewMandatesVisit.aspx?visitType=all&lang=En> [accessed on 25 January 2021].

<sup>7</sup> Human Rights Watch, *The Dirty War in Chechnya: Forced Disappearances, Torture and Summary Executions*, (2001); Amnesty International, *Russian Federation: What justice for Chechnya's disappeared?*, (July 2007) EUR 46/026/2007; Ombudsman of the Chechen Republic, *10 Years of the Institution of the Ombudsman of the Chechen Republic*, (2016: Grozny) at 110, 135, available at: <http://chechenombudsman.ru/downloads/doklad2015.pdf.pdf> [accessed 13 January 2021]



judgment in relation to nearly 600 individuals whom it has found to have been forcibly disappeared in the Region during the seven year period – known, for the purposes of post-judgment implementation, as the *Khashiyev* and *Akayeva* group of cases [*the Khashiyev group*].<sup>8</sup> The ECtHR has held that by virtue of these enforced disappearances, the State party had committed violations of the right to life and the right to be free from torture as enshrined in Articles 2 and 4 of the European Convention on Human Rights [*the ECHR*].<sup>9</sup>

9. The ECtHR has repeatedly concluded that the State party has systematically failed to undertake even the most basic of investigative steps<sup>10</sup> in the vast majority of disappearances including: the opening of investigations, the questioning of obvious witnesses and suspects,<sup>11</sup> the sharing of information with investigators by security forces, the conducting of autopsies or forensic medical tests, and even the establishment of necessary facilities for investigation within the Region – such as a laboratory within the Chechen Republic that is capable of identifying human remains.<sup>12</sup> Instead, the investigations have been riddled with perpetual delays and recurrent suspensions, as well as ill-treatment of family members including repeated failures to provide families with access to case files.<sup>13</sup> The implementation efforts have also been undermined by the failure of the State party to reform laws and practices including by continuing to apply domestic criminal limitation periods to the investigations<sup>14</sup> and failing to improve information sharing and collaboration among departments.

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<sup>8</sup> In May 2016, the Department for the Execution of Judgments of the European Court of Human Rights published an overview of the Court's judgments concerning enforced disappearances in the North Caucasus between the years 1999 and 2006. This document provides details of nearly 300 disappeared individuals in respect of whom the fate of only 38 were known at the time of judgment. See 'H/Exec(2016)5 - 25 May 2016 *Khashiyev and Akayeva v Russian Federation* (No. 57942/00) group of cases – Overview of the Court's judgments concerning enforced disappearances in the North Caucasus and the information provided by the Russian authorities as regards the measures taken to establish the fate of disappeared persons – Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights'

<sup>9</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5.

<sup>10</sup> See *inter alia Aslakhanova v Russia*, Application No. 2944/06, judgment of 18 December 2012; *Khatsiyeva and others v Russia*, Application No. 5198/02, judgment of 7 July 2008 .

<sup>11</sup> *Aziyevy v Russia* Application No. 77626/01, judgment of 20 March 2008; See also *Baysayeva v Russia* Application No.74237/01 judgment of 5 April 2007 [Lack of questioning of key suspects even extends to instances where the authorities were in possession of video footage showing the individuals responsible for the disappeared person's arrest yet failed to question them].

<sup>12</sup> Committee on Legal Affairs and Human Rights, *Human rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?*, 21 January 2013, Reference 14083, para 61: ["according to information received in November 2014 and confirmed in January 2016, no laboratory in the Chechen Republic is capable of identifying bodies that are decomposed."].

<sup>13</sup> *Aslakhanova v Russia*, Application No. 2944/06 and others, judgment of 18 December 2012.

<sup>14</sup> Committee on Legal Affairs and Human Rights, *Human rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?*, 21 January 2013, Reference 14083, para 66: ["The issue of prescription is crucial because the majority of crimes into which investigations have been opened on the domestic level ...carry statutes of limitations of 10 to 15 years. In the majority of cases, criminal investigations are pending into crimes which



10. The nature of the ongoing violations and failure to investigate have been found to be so systemic that, in 2012, the court departed with its own best practice by providing detailed guidance to the State party on the general and individual measures it had to take to address the investigative failures in the Region.<sup>15</sup> Further guidance has been provided to the State party by for over a decade by the CoM. Despite the clear and persistent guidance on the measures the State party must implement to address systemic investigative flaws, we are unaware of any case where the authorities have undertaken an effective post-judgment investigation that has led to the fate of the disappeared person being established.<sup>16</sup>

### **The State party's ongoing violation of the rights of family members of the disappeared to live free of torture, cruel, inhuman or degrading treatment**

11. The families of the disappeared in the Region have suffered immensely as a result of the disappearance of their loved ones and are themselves victims of the crime of enforced disappearance.<sup>17</sup> The Human Rights Committee<sup>18</sup>, ECtHR<sup>19</sup>, Inter-American Commission and Court of Human Rights<sup>20</sup> and WGEID<sup>21</sup> have all recognised that the suffering caused to the relatives by the disappearance of their loved ones and the continued anguish that comes with not knowing the fate of their loved ones is a form of torture or cruel, degrading and inhuman treatment.

12. In addition to the anguish that comes with not knowing the fate of their loved ones the relatives of the disappeared in these cases have also been subjected to almost two decades of indifference and ill-treatment by State party authorities. The State

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*occurred as far back as 14 years ago and which ostensibly carry statutes of limitation of 10 or 15 years and for which no one has yet been brought to justice.”].*

<sup>15</sup> *Aslakhanova v Russia*, Application No. 2944/06, judgment of 18 December 2012 para 221.

<sup>16</sup> In the context of this overview of cases prepared by the Department for the Execution of Judgments “fate of the disappeared persons” refers to the discovery of a body or remains which have been identified by some means as the disappeared person in question. In a small number of instances the cause of death has also been established.

<sup>17</sup> UN General Assembly, Declaration on the Protection of All Persons from Enforced Disappearances, 12 February 1993, A/RES/47/133 art 1(2); UN General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006, Aart. 24(1); UN Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *General Comment 3, Implementation of Article 14 by State Parties* 13 December 2012 CAT/C/GC/3 para 3: [“Victims are persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention. [...] The term “victim” also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization.”.]

<sup>18</sup> *Case of Maria del Carmen Almedia de Quinteros v Uruguay*, Views of July 21, 1983, Inter-American Court of Human Rights, Communication No 107/1981 (17 September 1981) para 14.

<sup>19</sup> *Kurt v Turkey* 15/1997/799/1002, judgment of 25 May 1998, paras 130-134

<sup>20</sup> Annual Report of the Inter-American Commission on Human Rights, 1977, OEA/Ser.L/V/II.43 doc 21 cor 1 of April 20, 1978; *Case of La Cantuta v Peru*, Inter-American Court of Human Rights Series C No 162 (29 November 2006).

<sup>21</sup> UN Working Group on Enforced and Involuntary Disappearances, Reports of the Working Group, 3 December 1983, E/CN.4/1984/21 para 172; UN Working Group on Enforced and Involuntary Disappearances, *General Comment on article 19 of the Declaration on the Protection of All Persons from Enforced Disappearances*, E/CN.4/1998/43 p 4.



party's conduct over the years has amounted to a blatant violation of the family members' right to truth and, in particular, to know the fate of the disappeared.<sup>22</sup> The ECtHR has found that the extent of the family member's suffering has been exacerbated where the applicant has been denied or delayed victim status, denied access to case files or information about the investigation, or directly subjected to threats or other degrading treatment by State authorities.<sup>23</sup>

13. The systematic nature of the initial kidnapping, unlawful detention and eventual presumed extrajudicial killing of the disappeared persons by security forces coupled with the persistent failure of the State party to effectively investigate the disappearances in the Region indicates that the State party has intentionally inflicted mental suffering on the families of the disappeared for the purpose of intimidation and discrimination.<sup>24</sup> In doing so, it has intentionally created a climate of fear and impunity that not only impacts the family members of the disappeared but also, more broadly, the Chechen minority ethnic community to which they belong.<sup>25</sup>

14. As a consequence of these ongoing violations the families of disappeared persons have faced severe and disproportionate psychological, social, economic and legal challenges.<sup>26</sup> A 2009 study by the International Committee of the Red Cross [‘the

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<sup>22</sup> UN Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *General Comment 3, Implementation of Article 14 by State Parties*, 13 December 2012 CAT/C/GC/3 para 16: [“Satisfaction should include [...] the search for the whereabouts of the disappeared [...] and for the bodies of those killed, and assistance in the recovery, identification, and reburial of victims’ bodies in accordance with the expressed or presumed wish of the victims or affected families”]; UN Working Group on Enforced and Involuntary Disappearances, *General Comment on the right to the truth in relation to enforced disappearances*, A/HRC/16/48, January 26, 2011 p 4: [“the right of the relatives to know the truth of the fate and whereabouts of the disappeared persons is an absolute right, not subject to any limitation or derogation. [...] This absolute character also results from the fact that the enforced disappearance causes “anguish and sorrow” [...] to the family, a suffering that reaches the threshold of torture. In this regard, the State cannot restrict the right to know the truth about the fate and the whereabouts of the disappeared as such restriction only adds to, and prolongs, the continuous torture inflicted upon the relatives.”].

<sup>23</sup> *Khamila Isayeva v Russia*, Application no. 6846/02, judgment of 15 November 2007 para 132 and 144.

<sup>24</sup> UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465 art. 1; UN General Assembly, *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 : resolution / adopted by the General Assembly*, 21 March 2006, A/RES/60/147 preamble: [“contemporary forms of victimization, while essentially directed against persons, nevertheless [can] also be directed against groups of persons who are targeted collectively”].

<sup>25</sup> UN Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *General Comment 2, Implementation of Article 2 by State Parties*, 24 January 2008 CAT/C/GC/2 para 22: [“States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection, including but not limited to those outlined above.”]; UN Working Group on Enforced and Involuntary Disappearances, *Report of the Working Group on Enforced or Involuntary Disappearances*, 23 January 1985 E/Cn.4/1985/15.

<sup>26</sup> International Committee of the Red Cross, *Families of Missing Persons: Responding to their Needs*, 27 September 2010 available at: <https://www.icrc.org/en/doc/resources/documents/report/russia-publications-300810.htm> [accessed 13 January 2021].





ICRC'] with 100 families of the disappeared in the Region revealed that 72% of families interviewed faced economic difficulties related to losing their primary breadwinner, spending money on efforts to locate their loved one and disruption in employment caused by psychological disturbances related to the disappearance – from which 30 – 45% of family members reported suffering<sup>27</sup> – or the lack of available work in their community.<sup>28</sup>

15. Women who have lost their husbands or sons have experienced the worst effects of the ongoing violations because of deeply rooted gendered norms, roles and stereotypes.<sup>29</sup> While gender-disaggregated data that can help reveal the impact the violations have had on this group of victims is limited, reports indicate that, because women whose husbands have been disappeared have lost the main breadwinner in the home, they are more likely to experience poverty, precarious employment, and housing insecurity following the disappearance.<sup>30</sup> The climate of impunity and deep distrust that has arisen in the Region from the unresolved nature of the violations means that women relatives of the disappeared are far less likely to report violence to law enforcement officials or to access state protection.<sup>31</sup> The WGEID has recognised the disproportionate impact disappearances have on women relatives noting:

As the family structure is disrupted, women are negatively affected economically, socially and psychologically. The emotional upheaval is thus exacerbated by material deprivation, made more acute by the costs incurred should they decide to undertake a search for their loved ones. Furthermore, they do not know when—if ever—their loved one is going to return, which makes it difficult for them to adapt to the new situation. In some cases, national legislation may make it impossible to draw a pension or receive other means of support in the absence of a death certificate. Therefore, economic and social marginalization is frequently the result of an enforced disappearance.<sup>32</sup>

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<sup>27</sup> International Committee of the Red Cross, *Families of Missing Persons: Responding to their Needs*, 27 September 2010 p 5 available at: <https://www.icrc.org/en/doc/resources/documents/report/russia-publications-300810.htm> [accessed 13 January 2021]

<sup>28</sup> International Committee of the Red Cross, *Families of Missing Persons: Responding to their Needs*, 27 September 2010 p 6 available at: <https://www.icrc.org/en/doc/resources/documents/report/russia-publications-300810.htm> [accessed 13 January 2021].

<sup>29</sup> See generally UN Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk*, 26 January 2006, E/CN.4/2006/61/Add.2 p 14-15.

<sup>30</sup> International Committee of the Red Cross, *Families of Missing Persons: Responding to their Needs*, 27 September 2010 p 7 available at: <https://www.icrc.org/en/doc/resources/documents/report/russia-publications-300810.htm> [accessed 13 January 2021].

<sup>31</sup> See generally UN Commission on Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk*, 26 January 2006, E/CN.4/2006/61/Add.2 p 14-15.

<sup>32</sup> UN Working Group on Enforced and Involuntary Disappearances, *General comment on women affected by enforced disappearances* 14 February 2013 A/HRC/WGEID/98/2.



16. We urge the Committee to view the treatment of the relatives of the disappeared by the State party as an ongoing violation of the right to live free of torture or other cruel, degrading or inhuman treatment and apply persistent pressure on the State party to effectively remedy the ongoing violations.

### **The urgent need for humanitarian resolution to determine the fate of the disappeared**

17. Despite the clear obligation on the State party to uncover the fate of the disappeared there is no tangible evidence that the State party has, since its recent review by the Committee, taken any meaningful steps to remedy the ongoing violations perpetrated against the disappeared persons and their families. To the best of our knowledge all investigations into the grave human rights violations perpetrated between 1999 and 2006 in the Region currently remain suspended or closed. The State party has taken no initiative to re-open investigations,<sup>33</sup> in fact, we are even aware of cases where family members have launched and subsequently been denied requests to have investigations re-opened or to access case files.

18. On December 3, 2020, the CoM finished its most recent consideration of the State party's efforts to implement the judgments in the *Khashiyev* group and concluded that since its review in 2018 not a single one of the 500 remaining disappearances had been clarified and noted that, by the State party's own account, the last identification of a missing person occurred in 2015.<sup>34</sup>

19. One of the principle reasons given for the lack of progress is related to the State party's insistence that the fate of the disappeared can be ascertained through the existing criminal investigation process but that there exist "objective difficulties" related to the historical nature of the disappearances. In its most recent action plan to the CoM, submitted in November 2020, the State party identified the following factors as major hurdles to implementation of the judgments in the *Khashiyev* group:<sup>35</sup>

- a. The fact that the initial investigation was undertaken during the armed conflict when many state institutions were not functioning.

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<sup>33</sup> Council of Europe Committee of Ministers, Decision on the H46-21 *Khashiyev and Akayeva* group v. Russian Federation (Application No. 57942/00), (Adopted by the Committee of Ministers on 3 December 2020 at the 1390<sup>th</sup> meeting of the Ministers' Deputies).

<sup>34</sup> Council of Europe Committee of Ministers, Decision on the H46-21 *Khashiyev and Akayeva* group v. Russian Federation (Application No. 57942/00), (Adopted by the Committee of Ministers on 3 December 2020 at the 1390<sup>th</sup> meeting of the Ministers' Deputies).

<sup>35</sup> Council of Europe Committee of Ministers, Communication from the Russian Federation concerning the case of *Khashiyev and Akayeva v. Russian Federation* (Application No. 57942/00), (Submitted to the Committee of Ministers on 9 November 2020 for consideration at the 1390<sup>th</sup> meeting of the Ministers' Deputies).



- b. Irrevocable loss of the most significant evidence including materials for conducting examinations and supporting documentation;
  - c. Refusal, for religious reasons, by the relatives of the disappeared to allow exhumation of the corpses for the purpose of identification; and,
20. However, evidence from forensic experts as well as successful examples from similar contexts around the world, including in Europe, indicate that there is no scientific impediment to the location and identification of those disappeared in the Region. Annexed to this submission is a report from two specialist forensic scientists, Professor R.L. Gowland and Professor T.J.U. Thompson [Annex II], who have expertise and experience establishing the fate of disappeared persons globally as well as providing the leading research and training in the latest scientific techniques for those undertaking such operations around the world [‘the Gowland/Thompson Expert Forensic Report’]. The report generally concludes the following about the State party’s action plans:
- Action plans [...] do not clearly articulate a systematic programme of activities for the proactive location, identification and return of historical cases of missing individuals. The action plans are difficult to decipher in terms of precise activities, but the procedures alluded to do not follow established international protocols for locating, excavating and identifying individuals from burial contexts.
21. The Gowland/Thompson Expert Forensic Report provides answers to the various obstacles which have been presented by the Russian Federation as preventing progress toward identification of disappeared persons in the *Khashiyev* group. The report notes that advancements in forensic science and the development of specialist teams with expertise in human identification from historical conflicts can yield significant results in highly complex and dated contexts. For example, anthropological and DNA analysis is currently being successfully undertaken to identify the bodies of soldiers from as far back as the Vietnam War, Korean War, and World War II [See Annex II]. The report specifically notes that the passage of time and loss of documentation regarding the location and identities of the disappeared is not an insurmountable challenge given that “the location of mass graves is discoverable using even partial archives, local intelligence, witness testimony, and archaeological techniques”. It further provides a detailed account of the methodology that could be applied to overcome the stated challenges with identification of the disappeared in the *Khashiyev* group of cases.
22. The combination of the prolonged nature of the disappearances, enduring limitations with the criminal investigation structures, and climate of distrust that exists between families and investigating authorities urgently calls for the creation





of a specialised humanitarian team made up of independent international experts and local Chechen and Russian staff. The CoM recognised the need for a humanitarian resolution in its recent communication with the State party where it encouraged the State party to take inspiration from the work of independent expert teams from other member states responsible for identifying missing persons in similar contexts.<sup>36</sup>

23. The proposed humanitarian approach, rather than being an example of an internationally-imposed resolution to a local conflict, reflects both the best path for realising the well-identified wishes of family members<sup>37</sup> [Annex I] - arguably the most significant factor for all actors to consider – and the broadly-accepted leading global approach to searching for disappeared persons [see Annex II].

24. Consequently, we urge the Committee to adopt a list of issues prior to reporting that is highly specific – noting the decades of back-and-forth between the State Party and the CoM; reflects the need for urgent identification of the disappeared; and focuses on the need for the State party to engage international independent forensic expertise to achieve progress in identifying disappeared persons in the Region.

#### *Suggested list of issues prior to reporting*

#### **Priority area 1: Relating to the state’s continuing obligation to find the remains of disappeared persons in the *Khashiyev* group of cases:**

25. Noting the international best practice in the field of searching for disappeared persons, please provide details of any steps the State has taken or is planning to take to seek international assistance from a reputable international body with a mandate and established expertise in the search for disappeared persons.

26. Please also provide details on whether the State party is considering the establishment of an independent specialised humanitarian body made up of international forensic experts and Russian and Chechen representatives to lead the work of investigating and locating the victims’ remains that is apart from the criminal investigation process.

27. Please review the attached forensic expert report and identify whether the State party accepts the report’s findings that there exists no scientific impediment to the location and identification of the disappeared in the Region.

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<sup>36</sup> Council of Europe Committee of Ministers, Decision on the H46-21 Khashiyev and Akayeva group v. Russian Federation (Application No. 57942/00), (Adopted by the Committee of Ministers on 3 December 2020 at the 1390<sup>th</sup> meeting of the Ministers’ Deputies).

<sup>37</sup> Stichting Justice Initiative, *Communication from a NGO (Stichting Justice Initiative) (18/11/2019) in the case of KHASHIYEV and AKAYEVA v. Russian Federation (Application No. 57942/00)*, 18 November 2019, DH-DD(2019)1425.



28. Please state when the State will issue an invitation to the United Nations Working Group on Enforced and Involuntary Disappearances [‘WGEID’] to conduct a country visit in response to WGEID’s most recent request dated 18 January 2019 to make a country visit.

## Conclusion

29. We urge the Committee to treat the failure to determine the fate of the missing persons as an ongoing violation of the right of family members of the disappeared to live free of torture or cruel, inhuman or degrading treatment requiring an urgent resolution and consistent and detailed oversight by the Committee of the State party’s actions in implementing a humanitarian resolution to the violations.

## ANNEX I - Humanitarian resolution (the applicants’ perspective)

A selection of quotes from applicant interviews conducted by EHRAC/Memorial:

*“If in the beginning I was also seeking punishment of perpetrators, today I’m old, and I want to find out the truth about my son before I die, irrespective of how painful that truth might be. Punishing anyone will not restore the balance of what they have done to me, the suffering they have caused me. No amount of money will make the pain go away.”*

*“We only have one aim now- to find out what has happened to our sons.”*



*“The CM I would want to ask to oblige Russia to inform us on the fate of our children.”*

*“.....all we want is to find out what happened to our son, but we are prevented from achieving even that.”*

*“I do not wish for anyone to feel what I feel right now, all we want is to determine the fate of my son, whatever it might be.”*

*“I just want to know if he is alive, serving this number of years in prison, or if he is dead. I want some peace in my heart,”*

*“I went to the ECtHR not for compensation, but because I hoped that when I sent my application to the Court, people would start searching for my son. Maybe he is serving a prison sentence somewhere, you never know. To this day I do not give up hope to find him and I will not give up my hope until the day I die.”*

*“In case my brother is no longer alive, we would like to receive some proof of this, either a DNA-backed proof, or better to have his body returned to us.”*

*“ I do not need anything aside from finding out what happened to my son, is he alive, is he dead, is he serving a prison sentence? these are my thoughts, and concerns.”*

*“...17 years have passed..... I support myself with hope that he is in prison, after all, you do hear stories like these and like, any mother, I hope he is alive even if this will mean that he is in prison.”*

*“All I want and care about is for my son to be found dead or alive, the rest does not matter now that so much time has passed. I do still hope he is alive though like any mother would. People do return after serving 20, 25 years prison sentence after all.”*

*“We envy people who have found and buried their sons. We do not know anything about our sons, their fate is undetermined, hangs in the air. We don't know whether they are dead or alive, if they are hungry or cold.”*

*“I would like to tell to the CoM to focus all their efforts on helping us to find our missing people, and to punish those who are responsible for their disappearance.”*

*“I do not need a compensation, I want to find my son.”*

*“To this day, we keep hoping to receive news about him, we keep giving charity on his behalf and on behalf of all other disappeared asking Allah to return them to us. I haven't given up hope.”*

*“Even if I ask to find perpetrators, no one will search for them, and no one will find them, we know that too well. But if I could find my son and bury him (of course, I would prefer him to be alive), then I would stop suffering. Every night, I dream as if he is calling me, the suffering does not go away. Once you know that a person is dead, you bury him and continue your life, the suffering stops. What causes me pain today is not knowing whether my son is alive or dead. In my heart, I always feel that he needs my help. Crying does not help. But I doubt that I will ever find out the truth about my son. There are many other families whose relatives have disappeared. No*



*one in this country is looking for my son or for them. No one came to me to tell me that that they know about my pain, to tell me that they will do everything to find my son. Even if they pretended they have found him (meaning if they would tell him the son is dead), then my suffering would stop, and I would stop hearing my son's call for help every night. Once you bury a person, your suffering eventually stops, but it never stops if the person is disappeared."*

## ANNEX II – FORENSIC EXPERT REPORT

### Briefing Note: The recovery and examination on human remains from mass grave contexts in Europe

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Professor RL Gowland and Professor TJU Thompson

#### 1. Introduction

This document discusses the key issues associated with the location, recovery and analysis of human remains from grave sites within Europe, with an emphasis on the situation in the North Caucasus region. It includes a brief critique of current action plans relating to the missing in Chechnya. The aim of the document is to provide objective scientific advice to facilitate informed decision making – it is not an action plan in and of itself.

#### 2. Author Biographies



**Prof. Rebecca Gowland** teaches and researches Human Bioarchaeology in the Department of Archaeology, Durham University. She has a PhD from Durham University and has published four books and over 50 peer-reviewed journal articles and book chapters on skeletal analysis and human identification. She has developed new techniques for estimating age-at-death and sex in adult and non-adult skeletons and has devised new approaches for establishing abuse and trauma in vulnerable demographics. During the last ten years she has developed and delivered a Chartered Society of Forensic Sciences approved course on body location, excavation and analysis to forensic practitioners from National Police forces in the UK and international agencies. She has collaborated with the International Committee of the Red Cross to produce online forensic training provision.

**Prof Tim Thompson** is Professor of Applied Biological Anthropology and Associate Dean (Learning & Teaching) in the School of Health & Life Sciences at Teesside University. He has a PhD from the Department of Forensic Pathology, University of Sheffield on the effect of burning on identification from skeletal remains. He has published four books and over 70 peer-reviewed journal articles and book chapters on forensic anthropology, human identification, and changes to bone over time. He is a Fellow of the Chartered Society of Forensic Sciences and the Royal Anthropological Institute, and Honorary Fellow of the Faculty of Forensic & Legal Medicine and is a Senior Fellow of the Higher Education Academy. He is Editor-in-Chief of the Journal of Forensic & Legal Medicine, and prior to this was Editor-in-Chief of the journal Science & Justice for three years. He has practiced forensic anthropology in the UK and Europe.





### 3. Summary

Many countries have sought to identify missing combatants from historic conflicts in Europe and elsewhere (e.g. from World Wars I and II, the Korean War, the Balkans War). There are international standards and methods for locating grave sites, and for exhuming and analysing the bodies. The forensic expertise required is highly specialised and falls beyond the scope of standard criminal investigations. A specialist, independent, forensic team is required, and purpose-built laboratories are necessary for processing the human remains and associated effects. The forensic team should work alongside local groups with the aim of training and capacity building within the region concerned.

Combatants and civilians who die during conflict are often buried in unmarked graves. Following death and burial the soft tissues of the body decompose quickly but the skeleton and teeth can survive for hundreds and even thousands of years. Analysis of the skeleton can establish the sex of the individual, an approximate age-at-death, height and pathological conditions (e.g. dental disease, or evidence for surgical procedures). These characteristics contribute towards establishing the identity of the deceased if relevant ante-mortem records are available. The manner-of-death can also be determined (e.g. gunshot injuries) in some cases. DNA can be extracted from bones and teeth even hundreds of years after death and analysed to establish an individual's identity when matched to samples obtained from close relatives. DNA analysis is one of a suite of methods and should be used in conjunction with other anthropological methods.

In areas of recent conflict, where tensions continue and governmental structures are weak, the humanitarian model advocated by the International Committee of the Red Cross (ICRC) has proven to be an effective way of proceeding. This model prioritises the identification and return of the missing to their families rather than the pursuit of criminal prosecutions. The decoupling of human identification from criminal procedures increases the likelihood of co-operation, information sharing and reconciliation. Experience from other countries (e.g. Cyprus) demonstrates that a timely intervention is advantageous to avoid the loss of witness testimony (through loss of memory or death of those with knowledge) and archives. A quick resolution is also important for family members, for whom the unknown fate of their relatives is a source of severe trauma.

### 4. A Model for Humanitarian Intervention

- [The location, recovery, analysis and repatriation of human remains does not require a criminal judicial framework](#)
- [A humanitarian model has proven successful in other countries, resulting in cooperation between stakeholders and the identification and return of the missing to their loved ones](#)

Families have a right to know the whereabouts and fate of their loved ones and the deceased have a right to the restoration of their identity after death (Crettol et al. 2017). The humanitarian framework advocated by the ICRC seeks to prioritise the location and identification of the missing within regions of conflict over and above the pursuit of criminal convictions. This model explicitly recognises the chronic anguish and emotional pain experienced by family members because of the unknown fate of their relatives and the impediment it poses to reconciliation (ICRC 2014). The humanitarian approach has proven



particularly effective in countries of recent conflict in which people are reluctant to provide information that might lead to the location of grave-sites or identification of the deceased due to a lack of trust in government organisations and fear of retribution.

Despite the lack of criminal proceedings, the forensic work is conducted to the same high standard. The identification process remains the same, as does the support for the families. The same forensic experts and facilities are required, and the funding requirements remains the same. All of this is important since final identification may still have legal requirements.

The separation between identifying the missing and criminal proceedings has worked successfully in Cyprus with the work undertaken by the Committee on Missing Persons (CMP), an organisation largely funded by the European Union. In Cyprus, remains are located, excavated, identified and returned to families with no attempt to attribute blame, or to pursue retribution. As well as prioritising the immediate needs of the families, this approach encourages greater transparency between stakeholders. Because the fear of criminal action or reprisal is removed, it promotes information sharing and co-operation. Within the current mandate of the CMP, the choice has been made that those who provide information are immune from prosecution and are guaranteed anonymity and confidentiality. The exhumations are, therefore, humanitarian in nature rather than political. Evidence of manner-of-death can still be recorded from the skeletons during the identification process. It is only since de-politicisation that the CMP has made significant progress. In Georgia, Russian, Georgian, Abkhazi, and South Ossetian representatives have adopted a similar model, working alongside the ICRC to identify those missing during the conflict in August 2008 and in the 1990s.

The socio-political circumstances and priorities of each country will differ, and some may wish to pursue both humanitarian and retributive approaches in tandem. It is important that all stakeholders discuss and agree their terms of reference and mandate. Clear procedures should be established prior to the commencement of any investigations. It is essential to ensure the proper management of information if both humanitarian and judicial objectives are pursued, because there will be inter-dependencies in terms of evidence gathering. A clear separation between the humanitarian mandate and justice systems is desirable (Crettol et al., 2017, 603)

#### **5. Comments on current actions to locate, exhume and identify the missing in Chechnya**

- It is highly likely that human remains are recoverable from Chechnya in a condition that would allow identification.
- Current action plans lack clarity and detail regarding the methods, expertise and activities of those engaged in searching for the missing.
- It is essential that an independent, international team is given oversight and control of the investigations to ensure that international protocols and standards are met.
- An independent team is also important to build trust between affected families and government authorities.

It is currently estimated that between 3000 to 5000 Chechen individuals are 'missing' because of historic conflicts between 1999 and 2006. Interviews with affected Chechen families have repeatedly emphasised that their key priority is to know the fate of their relatives and to have the remains of the missing returned for reburial. Not knowing is a form of psychological torture.



Progress towards investigating the fate of the missing in a post-conflict region is an important step in re-establishing human rights and the rule of law (Crettol et al. 2017).

Action plans eg. (DH-DD(2015)23, DH-DD(2015)257, DH-DD(2018)798) provided by Russia do not clearly articulate a systematic programme of activities for the proactive location, identification and return of historical cases of missing individuals. The action plans are difficult to decipher in terms of precise activities, but the procedures alluded to do not follow established international protocols for locating, excavating and identifying individuals from burial contexts. It is unclear as to whether exhumations are currently taking place, and if so, the procedures being used to establish the identity of the deceased.

The action plan argues that neither outside expertise nor independent, impartial oversight is necessary with respect to these investigations. It states that:

*“the competent state authorities developed a coordinated position concluding that there was no need to establish a new specialized centralized body responsible for the search for missing persons in the territory of the North Caucasus Federal District.”*

The ICRC and organisations such as EAAF (Argentine Forensic Anthropology Team) recommend that humanitarian action requires oversight by impartial, outside, independent experts, working alongside victim groups. It is not advisable to proceed with a Russian team as outlined in the action plan, because affected families will find it difficult to trust their findings. It is important that local Chechen staff as well as Russian staff are employed as part of the team, to help build trust through communication with affected families and also to help navigate the cultural and religious sensitivities involved in the exhumation and identification processes.

The current mechanism that Russia has employed for investigating information relating to the missing falls within existing criminal investigation structures:

*“The most experienced officers of the criminal investigation departments of the internal affairs bodies are involved in operational and search activities in connection with the messages on the crimes concerned. The aforesaid authorities start search activities immediately upon receipt of the information on disappearance or kidnapping, irrespective of the fact of the criminal case initiation”*

This is not advisable since human identification from historic conflicts requires a specialist team with specific expertise which falls outside of normal law enforcement activities. This is exemplified by the work of the Centre for Missing Persons (CMP) in Cyprus, and also organisations such as the Argentine Forensic Anthropology Team (EAAF), the Peruvian Forensic Anthropology Team (EPAF), The Inforce Foundation and Physicians for Human Rights, which have been involved in investigations of this nature since the 1980s (see section 6 for a full discussion of the expertise required).

Russia states that there is a loss of documentation regarding the location and identities of the missing given the time that has elapsed and changes in personnel in the intervening years. This is not an insurmountable obstacle. The location of mass graves is discoverable using even partial archives, local intelligence, witness testimony, and archaeological techniques (section 7.1). Document DH-DD(2018)798 indicates that some form of search is being undertaken (with no apparent success), but it lacks detail. The successful identification of grave sites has been achieved in numerous post-conflict situations. These searches are improved if investigations are conducted promptly, as the passage of time leads to less reliable witness



testimony/local intelligence through the loss of memory or the death of those with relevant knowledge. The latter is now proving an impediment to the work of the CMP in Cyprus. However, even in the absence of such information grave sites can still be found using a suite of techniques.

The action plan alludes to co-operation with NGOs when interviewing affected families: *“Close cooperation and information exchange by the criminal investigation subdivisions with the relatives of missing persons as well as with the citizens and representatives of non-governmental organizations has been organized and is being continued, which allows performing humanitarian functions in the course of relevant work.”*

No specifics are provided regarding which NGOs are involved, nor how their work is being co-ordinated across organisations, and with local authorities. Intelligence gathering appears to have been ad hoc and potentially exposes affected families to distressing interviews without discernible benefits (see section 7.3, ante-mortem data).

A database has been created: *“a centralized automated missing persons database and informational-search system "Opoznanie"”. The contents and functionality of this database should be checked against international standards and advice should be provided by an independent organisation such as EAAF who have specialists in database construction of this kind.*

The actions plans emphasise the use of DNA analysis for establishing the identity of those bodies that have been recovered. Genetic analysis should be used as part of a suite of techniques for identification, alongside anthropological analysis. Genetic samples should not be analysed within Russian laboratories and instead should be sent to an external accredited laboratory which has experience in analysing genetic samples from contexts such as these. Families of the deceased may be understandably reluctant to supply comparative DNA samples to Russian authorities given current political tensions and a lack of trust in the process.

The action plan argues that the families of some of the missing *‘prohibit’* exhumation due to *‘Islamic canon’*. There are several problems with this statement. Firstly, it implies that the identities of those buried are in fact known given that it refers to the wishes of the families. Secondly, a detailed discussion of Islamic law and humanitarian forensic exhumation by Al-Dawoody (2017, p.777) states that *“exhuming dead bodies for the purposes of transfer to the place of origin, and/or establishing the identity of the buried person such as in the case of dead migrants, is permissible under Islamic law”*<sup>38</sup>. The exhumation of bodies of Muslims killed and buried during conflict for the purposes of identification is underway in various regions of the world, including the Balkans and Iraq.

The action plans state that laboratory resources and finances are already in place to undertake the necessary investigations. It is imperative that these laboratory facilities are inspected by an independent expert team to check that they are fit for purpose, including whether they meet current ISO17025 standards, but also to scrutinise that investigative procedures conform to international standards. The action plan also implies that multiple laboratories across several geographical locations (some of which are located outside Chechnya) are involved in the analysis. Instead a dedicated and custom designed laboratory facility should be resourced for the analysis only of those *‘missing’*.



One aim of this humanitarian venture should be capacity-building in Chechnya through the training and establishment of local expertise. This has been a key feature of the work of the ICRC in Georgia, which may serve as a useful regional comparator. The current lack of trust between families and local and Russian government is an obstacle to progress; it is therefore important that this work is overseen by a neutral and impartial organisation.

Overall, we see no scientific impediment to the location and identification of those killed and still missing in Chechnya. Success has already been achieved in similar contexts across the world. It is a matter of political will, cooperation, resources and effective management. Progress towards identifying the missing in post-conflict regions is an important step in re-establishing human rights, the rule of law and societal integration.

## 6. Forensic Science and Identifying the Missing in Post-Conflict Regions.

- Forensic expertise is already present throughout Europe to support investigations of human remains from burial contexts arising from conflict
- A combination of forensic archaeology, anthropology, odontology and genetics are used to establish individual identity in such contexts
- Standards and accreditation schemes are present but vary from country-to-country

There are four key forensic disciplines that can support the identification of individuals exhumed from graves or recovered from other deposition sites (e.g. bodies left exposed) associated with historic conflicts:

- forensic archaeology (search and recovery of remains)
- forensic anthropology (skeletal analysis)
- forensic odontology (analysis of the teeth)
- forensic genetics (analysis of DNA).

These four disciplines are well established in Europe and elsewhere. Experts tend to work within their own countries since legal frameworks differ, and diverse educational and training pathways exist. The European Network of Forensic Science Institutes (ENFSI) was founded with the purpose of improving the mutual exchange of knowledge and information between countries. High quality peer-reviewed academic journals exist to support these four disciplines. Professional and academic societies exist for these disciplines, including some pan-European ones such as the International Academy of Legal Medicine.

## 7. The Location, Recovery and Analysis of Human Skeletal Remains

- There are established methods for locating clandestine graves/deposition sites.
- Excavation is destructive; archaeological approaches are therefore required to fully document the grave-site and ensure full recovery of the remains.





- Methods for establishing the identity of human remains from historic conflicts are well established and reliable, even in cases where multiple bodies are placed within a single burial context.

### 7.1. Locating graves

The first stage in locating potential grave sites is to undertake an intelligence gathering exercise. State authorities are likely to have records and information relating to the identity of many of the deceased and the location of bodies buried, either singly or in mass graves. If such records are not available or forthcoming, there is usually local knowledge/witness testimony regarding the location of grave sites. These data need to be gathered systematically and witnesses should be guaranteed anonymity and immunity from prosecution.

It is important that a specialist team examine the locations of potential grave sites. If intelligence gathering leads to general rather than specific locations, there are a series of techniques to help refine the search as follows:

**Desk-top survey:** This takes into account topography, vegetation, soil type, and access. For example, research on the victims of the Spanish Civil war graves have highlighted a pattern whereby victims are buried between 1 to 10km from the place they were detained and almost always within 100 metres of a principal road (Salado Puerto and Tuller 2017).

**Aerial survey:** This provides a clear perspective on changes in vegetation / area that may indicate the presence of a mass grave. The use of drones is recommended and the exploration of satellite images/Google Earth has also been used to identify grave sites (for example with the Satellite Sentinel Project). The use of infra-red and ultraviolet imaging of the ground surface has proven useful in the identification of grave sites (Abate et al. 2019).

**Field walking survey:** This traditional survey method is useful for establishing possible grave sites through observing changes in vegetation/topography. Health and safety should be considered here; for example, in the Balkans there was a suspicion that incendiary devices were present within and in the vicinity of mass graves. Field walking as a survey method for identifying the location of mass graves has been employed in a variety of countries (e.g. Chile and the Balkans).

**Cadaver dogs:** Trained dogs can identify mass graves even after many years have elapsed.

**Geophysical Survey:** This refers to a variety of non-destructive techniques used to survey an area with the aim of detecting sub-surface anomalies consistent with a grave. Methods include ground penetrating radar, magnetometry, and resistivity. For best results a combination of different techniques are recommended (Pringle et al. 2012, Abate et al., 2019).

### 7.2. Recovering human remains

Excavation is destructive and it is therefore crucial to proceed using established archaeological techniques (Anderson et al. 2002, Hunter et al. 2013). Detailed recording is essential to ensure that the evidential integrity of the site is preserved, and that stratigraphic and spatial relationships/associations can be reconstructed using site archives. Excavation must be conducted by trained archaeologists working alongside forensic experts. A forensic



anthropologist should also be on-site, as well as experts who wish to retrieve any environmental and trace evidence.

Health and safety on site and in the field is also a key concern. As well as basic concerns regarding working in proximity to heavy machinery, this includes ensuring that staff are protected from hostile onlookers.

The edges of the mass grave should be demarcated and a site plan created using a GPS to plot the graves in relation to other features on the landscape. Excavation should proceed initially with the aid of a highly trained mechanical digger operator working alongside an archaeologist. Once signs of bodies or personal effects start to appear, excavations proceed using hand-held tools (e.g. mattocks, spades, trowels).

The bodies should be uncovered and photographed in situ. Personal effects associated with particular bodies should be labelled accordingly so that they can later be re-associated in the laboratory. Each body should be given a unique number and during excavation it is essential that care is taken to ensure that there is no commingling (mixing) of body parts. In mass graves, limbs can become entangled and the bodies are likely to have undergone severe decomposition and potential disturbance (e.g. from animals/tree roots whilst buried, or through later episodes of body deposition). It is therefore essential to precisely record the body position within the grave and that excavation is conducted alongside a trained forensic anthropologist.

Recording should be detailed throughout the excavation and individual bodies 'mapped' three-dimensionally using GPS. Three-dimensional scanning and photogrammetry are now being used during excavation to help record the position of bones/limbs and associated personal effects/artefacts three-dimensionally. These contribute towards understanding the sequence and circumstances of deposition.

In situ recording needs to be very detailed. Even the position of the bones within a skeleton can reveal something about the mode of deposition. For example, in a body that was tightly wrapped at burial, the clavicles (collar bones) will decompose in a more vertical orientation than in a body that was not (Duday 2006). Careful excavation can therefore reveal lots of 'invisible' information about the burials.

Due to the detailed level of recording, the excavation of mass graves can result in a substantial amount of data. Standardised body proformas are often completed electronically in the field during excavation. Excavators should wear protective clothing to reduce the contamination of samples for genetic analysis with their own DNA.

There are published guidelines for excavating mass graves and these protocols should be used as a starting point (e.g.: Cox et al. 2008). Excavation can be a slow process, especially if the weather or physical environment is challenging. Furthermore, the excavation and analysis of human remains from mass violence contexts can generate a significant amount of material and evidence. Arrangements and facilities for the storage, curation and analysis of this material needs to be fully considered and resourced for the duration.

### **7.3. Identification of the deceased**



The identification of the deceased is a complex multidisciplinary process. Individual identity can be established from a range of biological material (Gowland and Thompson 2013). The soft tissues have often decomposed in historic mass grave contexts, and so we focus on the hard tissues (skeleton and teeth) here.

**Ante-Mortem Data:** Interviews, testimonies and tissue samples from families are required. There needs to be an organised and sustained effort to gather information in a standardised format. EAAF recommend that such information gathering occurs directly between a member of the forensic team, in conjunction with a local liaison officer, and families concerned. This is because there is often a breakdown of trust between bereaved families and government officials. These interactions also help establish a dialogue as well as trust between scientists and family members. This information needs to be inputted into a database system that allows matches to be secured between ante-mortem and post-mortem records. The location and security of the database needs to be addressed due to the sensitive nature of the information contained.

**Post-mortem Analysis:** Analysis of human remains from mass grave contexts require laboratories with significant space and environmental controls to store and analyse bodies and their associated personal effects (Wessling 2018). Depending on the burial environment, it may be possible that features such as hair colour can still be observed, and clothing and jewellery may be associated with the body. In instances of significant decomposition, osteological methods of establishing a basic biological profile are often necessary (e.g.: Mitchell and Brickley 2018). It is not acceptable practice to rely on genetic evidence alone. In cases where bodies have been burned or dumped in water etc, it may still be possible to collect useful information from the remains (Thompson 2015; Thompson et al. 2017)

**Sex:** This can be determined using morphological features of the pelvis and, secondarily, the skull. Metrical methods which examine sexual dimorphism in other bones (such as the humerus and femur) are also useful but are not reliable when used alone (Buikstra and Ubelaker 1994). Sex can also be established from the individual's DNA, or quickly and reliably from the analysis of sexually dimorphic peptides in tooth enamel (Stewart et al. 2017).

**Age-at-death:** This can be estimated using a variety of features of the skeleton and following established methods. For individuals who have not yet reached skeletal maturity (e.g. adolescent/young adult males), dental development and fusion of the various bones of the skeleton provide a useful guide for age. Once skeletal maturity has been achieved, morphological changes to the pubic symphyseal face and auricular surface (both located in the pelvis) as well as the sternal rib ends provide a guide to age at death (Buikstra and Ubelaker 1994, Samworth and Gowland 2007).

**Stature:** Height can be reconstructed through specific measurements of all those bones which contribute to height (Raxter et al. 2006, 2007). If the body is incomplete, height can be estimated through the measurement of the lower limb bones and the use of appropriate, population specific, regression equations.

**Pathology:** Evidence of ante-mortem trauma (e.g. fractured bones that have healed), or pathological conditions (e.g. joint disease) can provide information for establishing individual identity (Ortner 2003). Evidence of traumatic injury implicated as the cause of death, or indicative of torture prior to death, can be recorded from the skeleton during the identification



process or omitted, depending on the remit of the work. Local legal frameworks will determine who can confirm the cause of death (e.g. forensic pathologist). Criminal investigations need to adhere to principles of chain of evidence.

**Dentition:** Dental recording can be a very useful means of identifying an individual, particularly in instances of obvious dental intervention such as fillings or dental implants. Ante-mortem dental records, however, are not likely to be available for all individuals.

**Genetic:** There have been many scientific developments in DNA analysis in recent years and viable samples can be retrieved from skeletal remains and processed by specialist labs. This is a common and ongoing practice in post-conflict forensic investigations. For example, for identifying individuals from the Balkans war, from the troubles in Northern Ireland, and in Argentina. The Defence POW/MIA Accounting Agency in the USA routinely identifies fallen soldiers from historic wars, including World War II, the Korean War, and the Vietnam War using anthropological and DNA analysis. While the passage of time and decomposition has some detrimental effects, this can usually be mitigated through the use of new genetic techniques. The petrous portion of the temporal bone (part of the inner skull close to the ear), or the ear ossicles (bones in the inner ear) are a useful reservoir for uncontaminated DNA from deceased individuals (Pinhasi et al. 2015; Sirak et al 2019). It is important to note that the success of DNA analysis depends on the presence of appropriate ante-mortem or familial comparison samples. Without these, DNA identification can be challenging, as was the case in Libya where the DNA profiling struggled to resolve identification issues of deceased individuals following the 2011 revolution.

**Establishing Identity and Reconciliation:** Co-ordination of the scientific evidence, including ante- and post-mortem data should be overseen by an expert coordinator, with identity established through the integration of all evidence. Forensic scientists do not confer identity – an appropriately mandated Identification Committee will have this role. The composition of these committees depends upon the remit of the investigation, and the legal framework within the particular country of work.

Confirming identity is always more challenging in mass grave scenarios, where multiple bodies are commingled (Fowler and Thompson 2015). DNA analysis is still possible; success depends upon accurate and careful archaeological excavation, coupled with meticulous analysis of the remains in the laboratory. Within Europe, archaeological and forensic experts have considerable success in resolving both historic and recent mass graves.

**Repatriation to the families and reburial:** A multilingual family liaison officer, together with the scientists responsible for conducting the analysis should meet with the identified individuals' relatives to talk through the evidence and to ensure that the family are satisfied. The family should have the opportunity to view the remains and an appropriately attired 'viewing room' should be set-up to allow this process to occur within a comfortable environment that respects the privacy and emotional nature of the situation. This room can be part of the established forensic identification facility.

## 8. Capacity Building and Logistical Considerations

- Forensic practice is complex and time-consuming and requires appropriate funding



- Processing of the deceased from burial contexts needs to be undertaken in appropriate laboratory space, close to the graves
- The international community has a duty to train and support local forensic teams

Forensic expertise for investigating clandestine graves is highly specialised and historically the teams involved in such activities are comprised of non-local nationals. This has led to strong criticisms of paternalism and neo-colonialism. More recent approaches have focused on using international forensic experts to support local practitioners, through mentoring, training and peer-review networks (Thompson et al 2018). Local capacity building to develop teams who can investigate their own histories and legal contexts is important. For example, the International Committee of the Red Cross (ICRC) employ Forensic Advisors who work around the world to support local experts and trainees as they develop forensic strategies, processes and facilities.

Effective forensic science requires high-quality material and staffing resources. Designs for appropriate facilities are available, including the pre-fabricated laboratories used by the Centre for Missing Persons in Cyprus. Consideration needs to be given as to whether ISO17025 accreditation is necessary in these contexts. Facilities for processing the human remains and associated personal effects should be located close to the area where the graves are. The facilities should allow for anthropological analysis and work should be overseen by an impartial team of forensic experts alongside appropriate legal experts.





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