



Geneva, 8 October 2002

Project: The Missing - current developments



**Action to resolve the problem of people unaccounted for
as a result of armed conflict or internal violence and to
assist their families**

Mission Statement

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

by creating and making available tools for action and communication

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



Executive summary

Uncertainty as to the fate of relatives is a harsh reality for countless families in all situations of armed conflict or internal violence, one that often continues for many years. Not only is this deeply distressing for the families, it can also hamper efforts aimed at achieving reconciliation and an enduring peace by contributing to further outbreaks of violence. In its *Headquarters Appeal 2002* (pp. 44-45), the ICRC presented a new initiative:

The Missing:

Action to resolve the problem of people unaccounted for as a result of armed conflict or internal violence and to assist their families.

The project has two general objectives, one internal, the other external. On the internal level, the means and methods utilised by the ICRC in dealing with the problematic of missing persons will be examined and an attempt will be made to find solutions that lead to more efficient action. Externally, the ICRC's objective in launching this process, in cooperation with all those involved in dealing with the issue, is to:

- a) review all methods that could be employed to prevent disappearances in situations of armed conflict or internal violence more effectively, and respond to the needs of families that have lost contact with their loved ones;
- b) agree on common and complementary recommendations and operational practices with all those working to prevent disappearances, and respond appropriately when people are unaccounted for in a situation of armed conflict or internal violence;
- c) position this concern higher on the agendas of government authorities, the United Nations and non-governmental organizations.

The ICRC is pleased to note that its initiative has generated considerable interest among experts worldwide:

- the electronic workshops have allowed essential preparatory debate among specialists who contributed substantial papers to the issue, and laid the groundwork for a number of physical workshops held at Ecogia, the ICRC's Training Centre, near Geneva;
- the six physical workshops have taken place, were attended by a broad spectrum of experts, and generated conclusions and recommendations that will be presented at the Conference in 2003;
- for two of the three commissioned studies, the reports and their recommendations will be taken into account in the report prepared for the Conference; the third study is expected to submit a report by mid December 2002.

The themes, conclusions and recommendations of these various fora will be presented at the **international conference of governmental and non-governmental experts** to be held in Geneva at the **Centre de Conférence internationale de Genève** (CCIG) on **19 - 21 February 2003**. Preparations for this conference are ongoing.

The ICRC is preparing a synthesis report of the conclusions and recommendations generated by the preliminary workshops and studies. On the basis of this report a project declaration will be drawn which is to be presented at the conference for adoption. The ICRC hopes that the conference results will be directly useful to:

- individuals and organizations working in the political, humanitarian and human rights fields and active on the ground in situations of armed conflict or internal violence, and
- governments involved in developing international law and preventing or resolving conflicts, especially within the framework of the United Nations, for example through its Human Rights Commission, or within the International Red Cross and Red Crescent Movement, for example

Background

An area of particular concern to the ICRC is the issue of **missing persons** and what action is being taken to resolve the problem and assist their families. The “missing” are people unaccounted for as a result of armed conflict or internal violence - whatever the legal situation, international or non-international. Uncertainty as to the fate of relatives who go missing during an armed conflict or situation of internal violence is a harsh reality for countless families around the world. Long after hostilities have ceased, they can remain without news of what has become of their loved ones, making it difficult for them to come to terms with their loss. Such a situation might also hamper peace efforts and the transition to normality. The families of the missing are also victims and have needs which are currently not adequately addressed.

Through its traditional protection activities, the ICRC aims to clarify the fate of missing persons and ensure that their families are informed. Nevertheless, in most - if not in all - cases, the ICRC is prevented from fulfilling its duties in this domain by political and/or military obstacles. Numerous other humanitarian organizations are also increasingly becoming involved, directly or indirectly, in dealing with this issue. At the same time, a complementary approach and commonly agreed rules of conduct and behaviour are lacking, leading to possible duplication of work, or worse, additional suffering for families of the missing.

In view of the above, the ICRC has decided to undertake a thorough review and analysis of all current and potential means available to prevent the phenomenon of missing persons occurring and to resolve it when it does occur. The ICRC is sharing its analysis with governmental and non-governmental experts and seeks the drafting of common recommendations and best practices. The ICRC has decided to carry out this process in two stages.

The **first stage** includes studies conducted by a number of research centers and workshops bringing together governmental and/or non-governmental experts on topics relating to the issue of disappearances. The studies and workshops are intended to help clarify needs and the means of meeting them and to define recommendations and the best operational practices to be implemented. These events will draft recommendations and identify best practices for implementation at the operational level. They are taking place between February and September 2002.

During the **second stage**, the ICRC will convene an international conference of the experts who took part in the workshops and of other interested parties. The conference will be held in Geneva from 19 to 21 February 2003 (see also the ICRC's *Headquarters Appeal 2002*, pp. 44 - 45).

The results of the first stage will be made available to the Conference participants in the form of a document which will be compiled by the ICRC and which will contain all recommendations and best practices. This document will take into account the outcome of all events; obviously, there will be some overlap between events, as the same topic may be dealt with from different perspectives.

Where we are today: issues, working groups & workshops

In 2002, the following five topics are being analysed by internal ICRC working groups, as described in the ICRC's *Headquarters Appeal 2002* (pp. 44):

1. Traditional protection activities and restoration of family links
2. Human Remains
3. Family support
4. Collection and management of information
5. Ascertaining the fate of the missing: process and organization.

These internal ICRC working groups have established a set of **internal operational guidelines and checklists** that summarize the legal basis and/or ethical principles as well as specific policies and the methods, tools and resources to be applied. These take into account the results reached at the external events described below. This internal document is in the process of internal validation by the ICRC's hierarchy, and should be finalized by the end of 2002.

Externally, for the first stage of the process, **11 events** are organized:

- a) **Two electronic workshops** which serve as preparatory workshops to collect material from a limited number of selected experts (worldwide) using an ICRC extranet site set up for this purpose.
- b) **Six workshops at ECOGIA, the ICRC training centre near Geneva**, attended by governmental and non-governmental organizations, UN representatives, lawyers and other specialists.
- c) **Three external studies** which examine a number of specific issues in greater depth.

In addition, an Extranet site was set up to allow internal and external participants to consult experts' contributions, preparatory documents and the outcome of each workshop and to follow the progress of the whole process. The Extranet site is – upon inscription – also available to participants to the February 2003 Conference.

The recommendations and conclusions of these various events will be synthesized and presented at the international conference.

A. Two electronic workshops

1. Human remains and forensic sciences

Objective:

Generate a set of documents which will serve as working documents for the workshops: *Human remains: Legal, Politics and Ethics*, and *Human remains: management of remains and of information on the dead*. The content is to include forensic sciences in relation to the missing; the legal framework; specific legal, ethical and technical considerations regarding exhumation and identification (including laboratory techniques); involvement of the family in exhumation and identification. It also deals with the management of remains by non-specialists.

Timing: 28 January - 18 April 2002

Progress:

Four forensic experts participated in this electronic workshop which took place in February and March 2002:

- Prof. Barend A.J. Cohen,
Medico-legal Consultant for Clinical Forensics, Netherlands School of Public Health, The Netherlands
- Prof. Stephen Cordner,
Director, Victorian Institute of Forensic Medicine, Monash University, Melbourne, Australia
- Dr. William D. Haglund,
Director, International Forensic Programme, Physician for Human Rights, USA
- Prof. Chris Milroy,

The results of this electronic workshop allowed the ICRC to draft the preparatory documents for the two physical workshops on human remains: *'Human remains: Legal, Politics and Ethics'*, and *'Human remains: management of remains and of information on the dead'*. These preparatory documents were put at the disposal of experts participating in the physical workshops via the extranet site.

The first of these physical workshops took place in May, while the second took place in July (see below).

2. Data protection and human remains in the law

Objective:

The protection of personal data is to be discussed and general principles should be reached. Related issues such as the quality of data, the gathering and storage of data, and family rights will be covered. The legal protection of human remains is to be examined. International texts that lay down States' obligations with regard to the protection of human remains are to be sought out. General rules on exhumation, the identification of human remains and family information are also to be explored.

Timing: April - mid-May 2002

Progress:

An initial document containing draft principles was drafted by the ICRC on the basis of the main international texts and a selection of domestic laws and regulations on the subject. The document was then submitted to external legal experts for two rounds of comments through the electronic workshop. These participating legal experts were:

- Ms. Alejandra Gils Carbó,
Prosecutor and Data Protection Expert, Attorney General's Office, Argentina
- Mr. Douwe Korff,
Legal consultant (human rights and data protection), United Kingdom
- Mr. Eugene Oscanella,
Legal consultant (data protection in the medical and genetic fields), Canada
- Mr. Kosmas Tsiraktsopoulos,
Office of the Préposé fédéral à la protection des données, Switzerland.

The initial document was redrafted twice, taking into account comments and suggestions from the participating legal experts. The outcome has yielded:

- 11 commonly accepted principles on the protection of personal data;
- 9 commonly accepted principles on the identification of human remains;
- 9 commonly accepted principles on the protection of genetic information.

The final report is available for all experts on the Extranet. It will be published in English and French for distribution to the international conference of governmental and non-governmental experts in February 2003.

In addition, **Ante Mortem/Post Mortem Management** is examined by pulling together experiences of, principally, Physicians for Human Rights (PHR), Interpol, and the US Defense Department's Prisoner of War/Missing in Action Office (DPMO).

Objective:

Arrive at standard protocols for the collection of ante mortem data and for matching it with post mortem data. The intention is to propose standardized formats for the information that should be collected about the missing (and presumed dead) person, the interviewed person who is usually a family member and any other person offering relevant information.

Timing: On going

Progress:

In Washington, the ICRC met with experts at the Defense Prisoner of War/Missing Personnel Office (DPMO) of the Department of Defense, the Armed Forces DNA Identification Laboratory (AFDIL). Further meetings were held with representatives of the US Military Central Identification Laboratory

Safety Board (NTSB). The ICRC also twice met with representatives of the US State Department to inform them of the ICRC project and seek support.

The ICRC further met with Physicians for Human Rights (PHR) both in Amsterdam and Washington. An agreement in principle has been reached to try to design a standard AM/PM data collection form and corresponding software for common worldwide use.

The ICRC also met with Interpol in March. It further attended the annual Interpol meeting in Lyon of the *Standing Committee on Disaster Victim Identification*, and met with various experts. It also distributed a draft document: *'The Missing: Action to resolve the problem of people unaccounted for as a result of armed conflict or internal violence and to assist their families - Cooperation with the INTERPOL Disaster Victim Identification (DVI)'*. Further meetings are planned.

B. Six workshops

The preparatory phase of each workshop comprises:

- the establishment of reference documents based on international humanitarian law and human rights, and relevant lessons or experiences from past and present situations of armed conflict or violence;
- written contributions from experts invited to participate in the workshop concerned, such as senior military officers, senior government officials, historians, lawyers, medical, psychology or forensic specialists and academics.

Documents are made available to the participants via the extranet site that allows all of them to follow the entire process.

At the end of each workshop, the outcome is summarized by the ICRC and posted on the extranet site. Individual opinions are not recorded; neither the participants nor their organizations bear responsibility for the summary.

In addition, the final report of the workshop, including the outcome, experts' contributions and the ICRC preparatory documents, will be prepared and subsequently published in English and French for distribution to the international conference of governmental and non-governmental experts in February 2003.

1. Members of armed forces: identification, family news, killed in action, prevention

Objective:

Generate guidelines and recommendations for best practice with respect to the identification of members of armed forces, to the exchange of family news between members of armed forces and their families, to the management of dead in the battlefield and to the main rules of combat to respect in order to avoid people unaccounted for. Taking into consideration existing international law, rules, regulations and resolutions, the workshop will address the following issues: identification means for members of armed forces; exchange of family news between members of armed forces and their relatives; management of the dead in the battlefield; and the main rules of combat to respect that avoid the occurrence of people unaccounted for.

Timing: 06-07 May 2002

Progress:

The workshop brought together ten participants, of which seven were high-ranking military officers. Some of the participants had contributed with written documents.

The workshop sought to establish best practices as well as minimum standards along four major themes, for each of which the ICRC had drafted preparatory documents:

1. identification means for members of armed forces or armed groups;
2. management of the dead on the battlefield;
3. exchange of family news between members of armed forces or armed groups and their relatives;
4. main rules of combat that must be respected to prevent the occurrence of unaccounted for, or

Chairs for the workshop were:

- Brig. Gen. Titus K. Githiora,
Chief Legal Services, Ministry of Defense, Department of Defense, Kenya
- Col. Ion Didoiu,
Ministry of National Defense, Romania
- Lt. Col. Mark Nicholas Claydon,
Head of the Prisoner of War Information Bureau, Service Personnel Policy, Ministry of
Defense, UK
- Brig. George Mutandwa Chiweshe,
Judge of the High Court of Zimbabwe.

The participants reaffirmed the right of the families to know the fate of their relatives. They agreed as a recommendation that identification of members of armed forces or armed groups is a key measure to prevent persons from becoming missing as a result of armed conflict or internal violence and that proper identification (i.e. personal records, identity cards, and identity discs, which constitute the absolute minimum) is crucial to account for persons reported missing.

Regarding the management of the dead on the battlefield, the participants recommended, on the basis of the International Law and on checklists agreed upon during the workshop, that armed forces and armed groups should draft standard operating procedures (SOP's) and integrate them in the training.

The workshop also recalled that each party to an armed conflict must implement a mail system for personal contact between members of armed forces or armed groups and their relatives, must inform families without delay about wounded or dead relatives among their own troop, must communicate to their members any significant information regarding their relatives and has the obligation and responsibility to establish an Information Bureau.

Lastly, the main rules of combat to respect in order to avoid unaccountable casualties and the principles to be translated into Standing Operating Procedures (SOPs) were defined and recalled. The commanders are to ensure strict compliance with SOPs.

2. Means to prevent disappearances & to process missing cases

Objective:

Generate guidelines and recommendations for best practice with respect to the prevention of disappearances and the processing of files on people unaccounted for. The workshop will address the following issues:

- collection and use of relevant information on events having led or potentially leading to persons becoming unaccounted for, and on individuals concerned;
- constitution of comprehensive files on individuals sought by their families or reported missing, and on relevant events, with a view to clarify the fate of these persons;
- and, finally, the specific role (mandate/mission), policy, practice, constraints of the various actors and cooperation/coordination mechanisms.

Timing: 24-26 July 2002

Progress:

The workshop was attended by 23 external experts involved with different aspects of the issue of missing persons from different parts of the world. The range of expertise represented allowed the issue to be tackled from a number of perspectives. Written contributions received prior to the workshop provided valuable input and formed a basis for the discussions.

The workshop addressed three main themes:

- Theme 1 Ensuring protection of persons' physical integrity in order to prevent persons becoming unaccounted for during an armed conflict or situation of internal violence.
- Theme 2 Prevention of the phenomenon during a situation of armed conflict or internal violence: preserving or restoring family contact.
- Theme 3 Processing of files on people unaccounted for.

Chairs for the workshop were:

- Mr. Roberto Ricci,
Human Rights officer, Policy, Planning and Methodology team, UN Office of the High Commissioner for Human Rights (OHCHR)
- Mr. Duaij Al-Anzi,
Advisor, Council of Ministers, National Commission for Missing Persons and POW Affairs (Kuwait)
- Ms. Danielle Coquoz,
Head of the Central Tracing Agency and Protection division, ICRC.

A rapporteur presented the working group's findings and recommendations in plenary session.

The role of the ICRC, apart from organizing the workshop, was to record the proceedings without attribution.

As a primary recommendation, the workshop stressed that the existing international humanitarian law and human rights law should be respected and implemented by governments as well as by opposition (armed) groups in all situations under consideration (international armed conflict, non-international armed conflict and other situations of violence). This includes the need to hold perpetrators of violations accountable and to prosecute them. The workshop expressed its strong wish too that both the 1992 UN *Declaration on the Protection of all Persons from Enforced Disappearance* and the relevant outcome of the present process be integrated into international binding instrument(s).

The primary responsibility of authorities and opposition (armed) groups and leaders to take proper measures to prevent persons becoming unaccounted for as well as to clarify the fate of those who have become unaccounted has been reaffirmed. The role of international and national governmental and non-governmental organizations may vary according to the context on a scale going from counseling to supplementing authorities and motivating the community of states for necessary diplomatic pressures.

A number of specific measures aimed at protecting persons from becoming unaccounted for and at clarifying the fate of missing persons were identified. These measures include the monitoring of persons at risk; the training of families to plan for emergency situations; the unlimited access of humanitarian organizations to persons at risk; the identification and regular visits to all persons deprived of their liberty by the ICRC or other impartial humanitarian organizations; the identification and registration of vulnerable or persons discriminated against -- in particular of minors; the implementation of the principle of *non refoulement*.

Among these measures, the right to family news which includes restoring and maintaining communication between family members, has been considered as a fundamental right to be recognized as such by governments and opposition (armed) groups and leaders. The violation of this right should be recognized as inhumane treatment. Whenever needed this right should be implemented through the Red Cross / Red Crescent family news network which should be supported actively by all actors present in a given situation.

Most of the above mentioned measures imply the collection, use and management of information either on events or on persons in order to act on patterns of abuse as well as in favor of individual persons, for accountability, and for establishing truthful historical records. While the modes of action may vary among the various actors involved and according to their mandates and objectives, the following were recognized and stressed:

The need to:

- coordinate and share information;
- agree on common standards regarding the information to collect and its management;
- ensure proper protection of personal data;
- rely on local resources having a good knowledge of the context at all levels (political, cultural, etc.);
- compile comprehensive and reliable individual files;
- centralize personal data used for humanitarian services whenever possible at the ICRC.

Standard checklists -- to be adapted to each given context -- on information to be collected on events or persons aimed at protecting persons from becoming unaccounted for and at clarifying the fate of missing persons have been discussed and agreed upon.

3. Human remains: law, politics & ethics

Objective:

Generate guidelines and recommendations for best practice with respect to the legal, political and ethical aspects of the management, exhumation and identification of human remains. The pertinent legal guidelines, ethical codes, legal and ethical considerations (including the use of DNA) and considerations for work contracts will be discussed. Family considerations and information issues will also be covered.

Timing: 23-24 May 2002

Progress:

The workshop drew together 21 expert participants, of whom the majority were forensic scientists with field experience. Other participants were from organizations with a legal or political interest in issues related to the Missing.

The subjects addressed were specifically chosen to precede the workshop '*Human remains: management of remains and information on the dead*', which will take place on 10-12 July.

Chairs for the workshop were:

- Mr. Eric Stover,
Director, Human Rights Center, University of California, USA
- Prof. Stephen Cordner,
Director, Victorian Institute of Forensic Medicine, Monash University, Melbourne, Australia.

Written contributions received from experts prior to the workshop provided valuable input and formed a basis for the discussions. Using documents prepared by the electronic workshops "*Human remains & forensic sciences*" and "*The legal protection of personal data and human remains*" as background, the experts addressed two principle themes:

A. Exhumation and identification of remains: the tension between justice and identification

On this theme the workshop recognized the rights of families to know the fate of their relatives and that identification of remains is necessary to uphold these rights. The role that forensic specialists play in the domestic context cannot be automatically extrapolated to the role they have in contexts involving missing people; there are some important differences. In the domestic context, forensic specialists work as an extension of the domestic legal process. Identification of remains is an integral part of criminal investigation and goes hand-in-hand with ascertaining the cause of death. However, in a context involving missing people, especially when the investigation involves the exhumation of mass graves, the cause of death may already be known or be obvious, and identification may be the most difficult and resource-intensive task. While forensic specialists may feel comfortable from an ethical perspective working to uphold human rights and investigating violations of international humanitarian law and of human rights, this includes the rights of the family to know the fate of their relatives. The work of forensic specialists is necessary to ensure not only that justice is done but also that the best is done for the families and this involves identification of remains.

The workshop also gave consideration to the need for an international body of forensic scientists, which would govern issues concerning forensic specialists working in this domain such as standards, qualifications, audit and contracts of employment.

B. Criteria for identification and the role of DNA analysis

The workshop defined identification as "Individualization by the attribution of birth name or other appropriate name to human remains" and drew up recommendations about who bears ultimate responsibility for identification.

Identification can be concluded in three ways:

- i. visual or normal or customary (relatives or acquaintances viewing the remains, possession of identity documents or tags)
- ii. weight of evidence or circumstantial (matching of ante mortem data with information gathered during the examination)
- iii. scientific / objective (by dental records, fingerprints or DNA)

This is not necessarily a hierarchy but a useful question is that of identification by means of

Identification of human remains through DNA typing should be undertaken when other investigative techniques of identification are not adequate.

The workshop made some general recommendations about the use of DNA analysis in the context of the Missing. At the same time, it recognized that identification programmes in which DNA has primacy are near-future possibilities; the workshop identified certain conditions that should be fulfilled before such programmes are established.

4. Human remains: management of remains and of information on the dead

Objective:

Generate guidelines and recommendations for best practice with respect to the practical, technical and operational aspects of the management, exhumation and identification of human remains as well as the management of all relevant information. A number of guidelines will be sought to help forensic scientists in their tasks when finding graves, on exhumation and identification, when collecting ante mortem data, when performing model autopsies and when using DNA testing. Guidelines for non-specialists when evacuating, transferring and repatriating remains and in the management of remains will also be sought. Information considerations and family involvement in providing ante mortem data and identification will be taken into account.

Timing: 10-12 July 2002

Progress:

The workshop followed up on the preparatory work conducted via the electronic workshop '*Human remains and forensic sciences*' and the workshop '*Human remains: law, politics & ethics*' (see above).

This formal workshop consisted of 26 concerned experts, the majority of whom came from the domain of forensic sciences. The central focus of the workshop was the interplay within the triad of expertise, standards and constraints imposed in a given context.

Chairs for the workshop were:

- Prof. Dr. Markus Rothchild,
German Society of Legal Medicine, Germany
- Dr. Morris Tidball-Binz,
Director, International Service for Human Rights (ISHR)
- Prof. Stephen Cordner,
Director, Victorian Institute of Forensic Medicine, Monash University, Melbourne, Australia
- Dr. William D. Haglund,
Director, International Forensic Programme, Physicians for Human Rights (PHR)
- Mr. Luis Fondebrider,
Argentine Forensic Anthropology Team (EAAF), Argentine.

Written contributions received from experts prior to the workshop provided valuable input and formed a basis for the discussions. Using documents prepared by the electronic workshops "*Human remains & forensic sciences*," and "*The legal protection of personal data and human remains*" and the formal workshop "*Human remains: law, politics and ethics*" as background, the experts made recommendations in relation to a number of themes:

1. A standardized format for recording
 - the findings of an autopsy and for performing examination of remains under difficult circumstances;
 - ante mortem data.
2. The workshop recommended that the two formats be determined and agreed upon by experts in a future working group as a continuation of the current process launched by the ICRC, and that the two formats be compatible in relation to language, terminology, software, and training of personnel. The same working group will determine a minimum standard of practice for forensic scientists working in all contexts involving missing people.
3. The workshop was able to make recommendations about the most appropriate means or combination of means of identification in different contexts. This included an examination of

4. The consideration of operational feasibility of DNA analysis was driven by legal and ethical principles arrived at in previous workshops. Firm recommendations were made about factors such as cost, logistics, and communication to the affected families and communities, responsibilities for errors and accreditation of laboratories.
5. A commitment was given by two members of the workshop to enhance existing guidelines for exhumation.
6. The extent of involvement of families in the exhumation and identification of remains generated much debate. Participation in the process could be both beneficial and harmful to the investigation whilst at the same time healing or traumatic for the families themselves. All agreed that in relation to this subject, a degree of involvement was necessary but this would depend entirely on the context, culture and society in question.
7. The workshop examined the guidelines from other workshops regarding situations in which non-specialists must manage human remains. The input of forensic specialists was useful in that their recommendations fine-tuned existing guidelines in a way that would ensure maximum preservation of information that could lead to later identification.

5. Support to families of people unaccounted for

Objective:

Generate guidelines and recommendations for best practice in response to the specific needs of families of the people unaccounted for. The workshop will address the following issues with regard to the families of people unaccounted for and people unaccounted for who have returned after a long absence: identification of the material, financial, legal and psychological needs (including the role of compensation); definition of programmes and activities to respond to these needs; the role of various actors in their implementation; financial resources; mourning process and commemoration; the role of family associations.

Timing: 10-11 June 2002

Progress:

25 experts from a variety of geographical areas and domains involved with the "Missing" issue, including representatives of the families of missing themselves, participated in the workshop. The diversity of expertise allowed the issue to be tackled from different perspectives. Written contributions received prior to the workshop provided valuable information and formed a basis for the discussions.

The workshop addressed 3 main themes. Each theme was chaired and moderated by a participant. The chairman presented the themes in a plenary session, discussed in working groups whose findings and rapporteurs presented recommendations.

The role of ICRC, apart from organizing the workshop, was to record the proceedings without attribution.

Chairs for the workshop were:

- Prof. Joop de Jong, MD, PhD,
Director, Transcultural Psychosocial Organization (TPO)
- Prof. Yvan Droz,
Chargé de cours, Graduate Institute of Development Studies (IUED), Geneva, Switzerland
- Ms. Yvonne Visaka Dharmadasa,
President, Parents of Servicemen Missing in Action, Sri Lanka.

The workshop recognized the overriding need of families of unaccounted for to know the fate of their missing relative. It acknowledged that the primary responsibility for supporting these families lies with the governments concerned, but that the international community has the secondary responsibility of pressuring governments to fulfill their responsibilities and to substitute such assistance when necessary.

Theme 1 Families of unaccounted for and their specific needs during hostilities/transition period.

The workshop identified the needs of families of unaccounted for according to material/financial, social, psychological and legal aspects and examined the possibilities and constraints associated with addressing these needs. It recognized the importance of family and community involvement at all stages of a programme, of supporting and developing existing local resources, and promoting traditional coping mechanisms. Provision of assistance should be approached from a broad perspective, encompassing the social, economic, political and cultural determinants of the missing people and their families, and should pay sufficient attention to children. To enable staff to work in an effective and culturally sensitive way, more importance has been placed on the responsibility of organizations to provide improved training and support which should include a thorough knowledge of the culture, society and role of the authorities in each context.

Theme 2 Families and death

The sole prerequisite to mourning is the belief in the death of the person concerned. Until adequate proof of death is present, relatives of missing persons are not able to mourn. Delivering information on death, human remains or personal effects of a missing person to their family is a delicate matter and requires an understanding of the process of mourning as well as knowledge of the local culture and customs. Staff needs special training for such aspects of their work both in order to carry it out in a sensitive manner and to protect themselves from secondary traumatization.

Theme 3 The role of Family Associations

The workshop addressed the important role of family associations in representing the families of people unaccounted for, providing support to their members and raising the issue of the "Missing" on the agenda of authorities. Such associations frequently operate with limited skills and resources whilst facing severe political and environmental constraints. Support is needed to facilitate development of their capabilities and to encourage cooperation between associations. This would increase the impact of their activities and also facilitate the exchange of information and development of skills. Family associations should do their utmost to safeguard their independence.

6. Mechanism to solve issues on people unaccounted for**Objective:**

Generate guidelines and recommendations for best practice with respect to the mechanism(s) to be set up in order to solve issues on people unaccounted for. Existing mechanism(s) will be evaluated. The balance between family needs, justice needs and reconciliation needs will be taken into account.

Recommendations will be made on the mechanism(s) to be set up, the actors to be involved and their responsibilities and the resources required and how to cover them.

Timing: 19-20 September 2002

Progress:

24 experts from a variety of geographical areas and domains involved with the "Missing" issue, participated in the workshop. The diversity of expertise allowed the issue to be tackled from different perspectives.

The following documents provided valuable information and formed a basis for the discussions:

1. written contributions from experts received prior to the workshop,
2. the outcome of the study "Overcoming the tension between family needs and judicial procedures" (see summary below),
3. the outcome of the first phase of the "Study on existing mechanisms existing mechanisms to solve issues related to people unaccounted for" which includes 3 documents (see summary below):
 - "The Missing: The ICRC as a mechanism to solve issues on people unaccounted for";
 - "The Missing: Truth Commissions as mechanisms to solve issues on people unaccounted for";
 - "The Missing: National Human Rights Commissions as mechanisms to solve issues on people unaccounted for"

The workshop addressed a list of questions in working groups which reported their findings in plenary by *rapporteurs*. Mr Jean-François Rioux, Professor in Political sciences - Resolution of conflicts at the Université de St Paul (Canada) ensured the chair for the plenary.

The role of ICRC, apart from organizing the workshop, was to record the proceedings without attribution.

The workshop's objective was to establish best practice guidelines as well as complementary approaches to ensure the effectiveness of mechanisms in clarifying the fate of people unaccounted for as a result of (international or non international) armed conflicts or other situations of internal violence. This has been accomplished through discussion of different topics and accompanying questions, such as the influence of the context on mechanisms, the objectives to be fulfilled by mechanisms or the means to obtain information.

All themes were deliberated in three working groups. Each group's findings and recommendations were then presented by a rapporteur and examined in plenary; a participant chaired the plenary. The role of the ICRC, apart from organizing the workshop, was to record the proceedings without attribution. The detailed conclusions and recommendations are set forth in section 2 below.

The workshop established that the main obstacles faced by mechanisms aimed at clarifying the fate of persons unaccounted for are of a political and technical nature in all situations under consideration. Types of situations, whether armed conflicts or other situations of internal violence, should not be decisive in assessing the way of addressing the issue of missing people. The determining factors are the cause of disappearances, either the ill will of those responsible leading to crimes and violations or disorganization and facts of war.

Preventive and corrective measures have been identified to overcome known obstacles. Measures such as the need for a central national mechanism mandated to obtain, manage and transmit to the families all information about victims of the concerned situations in each country; the need for all mechanisms to deal with state and non-state entities; the need for human rights mechanisms to be extended to cover non-states entities; the need for authorities and civil society to be aware that the resolution of the issue of missing people is needed for future prevention so that it does not become a legacy.

The need of families for information is universal. Mechanisms put in place should not overlook the clarification of individual cases. According to context and circumstances, the needs for justice, accountability and acknowledgment should be considered in parallel.

Authorities (state and non-state actors) bear primary responsibility to provide information on people unaccounted for and must be held accountable.

Measures such as amnesty laws, pardon commissions or laws reducing punishment and granting protection to perpetrators, provided there is an important contribution to the truth, may be useful to gather information; however, blanket amnesty laws must not be enacted and these measures must be applied in accordance to international law. Third person information might also be helpful. Last but not least, the publication of names and pictures of missing people is very important for families and for exerting pressure on authorities.

In most situations, there should be multiple mechanisms (e.g. humanitarian, political, judicial and non-judicial) to cover the whole range of needs of families and communities with different bridges between them. Mechanisms should not be externally imposed; they have to be independent, impartial in their outlook and working methods. The involvement of international organizations gives them credibility. Mechanisms bringing the (former) warring parties, together are useful for the search of missing persons if a third party is actively involved, but above all, if the political will of the parties exists. Whenever judicial mechanisms are implemented, criminal prosecution should provide, to the concerned families, information encountered during investigations, if this information could shed light on the fate of a missing person, in a manner and at the earliest time compatible with judicial guarantees and the efficiency of prosecution. In particular, where the judiciary may not be able to handle all cases of persons unaccounted for, the implementation of non-judicial mechanisms such as truth commissions should be considered.

Mechanisms should be complementary; they should coordinate their activities and exchange information on people unaccounted for while complying with the rules regarding the protection of personal data and their individual mandates. At country level, a central database on all missing

Mechanisms need ongoing communication and consultation with the different sectors of society. They should clarify systematically their goals and working methods. They should have non-governmental organizations as partners. Above all they should keep families informed about their work as well as their limitations. Nevertheless, direct participation of families in mechanisms, processes (like exhumation) and information sharing should be dealt with in a sensitive and culturally appropriate manner. Mechanisms have a responsibility not to perpetuate the suffering of families or give them false hopes. They should promote legal, psychological, financial, social and medical services to cover the needs of the families.

C. Three external studies

1. Mourning process & commemoration

In the frame of the project *The Missing*, assisting the families of people unaccounted for involves confronting issues associated with death in a culturally sensitive manner. In order to do this it is necessary to understand the character of mourning within the context of culture.

The aims of the study were:

- to provide an understanding of cultural perceptions of death ; to define the sense of mourning rituals and funeral commemorations in situation of armed conflict, internal violence and/or post-conflict transition periods in different areas of the world;
- to identify common threads amongst cultures on which it may be possible to base recommendations (best practices) regarding conditions required for facilitating grieving process.

Progress:

The study entrusted to the Graduate Institute of Development Studies (IUED), University of Geneva (Switzerland) has been delivered. It has been directed by Yvan Droz, doctor in ethnology, with the collaboration of Sylvain Froidevaux, doctor in social sciences.

This report tackles the issue of the mourning process; the central role that bereavement plays in all cultures and the necessity and rights that relatives of the dead must exercise in order to have 'closure' i.e. to complete the process of grieving in order to continue with their own lives. Its anthropological approach is supported by contributions of worldwide experts, interviews with leaders of the main religious communities and with field workers of humanitarian organizations.

From the respect for the dead and the funerals that are due to them, with the guarantee of a good development in the process of mourning depends the maintenance - or the re-establishment of peace and of social order.

The multiplicity of the practices of funerary and of mourning shows that it is not possible to set general rules. On the other hand some unchanging practices point towards the essential points:

- Death is always included/understood in a precise culture. Whatever the manner of treating the corpses, these practices obey a ritual which often defines the destiny post-mortem of the deceased. The importance of the funerary practices is crucial: Absence of these rituals can be perilous for both the living and the dead, as well for maintaining the grieving relations between them.
- While it would be good if it adhered to a "cultural" matrix, funerary rituals vary greatly according to different groups and events. Even within the same culture, a large variety of practices can take shape. To know the customs and habits of group risks the danger to stereotype them. Ethnographic knowledge is therefore not enough. Still one needs to bring together the local reality.
- Not to respect prescribed funerary practices – an all too frequent occurrence in situations of conflict - is a means of "killing" the dead by denying a hypothetical post-mortem. Often, it results in ill feeling, which will haunt those who are left behind.

The main recommendations may be summarized as follows:

➤ **To everyone, do not forget:**

- to propose – and not to impose – assistance and/or relief
- to respect the convictions and the privacy of people
- to respect symbolic places such as sacred or forbidden areas
- the relationship between those who give and those who receive which implies a relationship of power (domination of the first; submission/dependence of the second).

➤ **Facilitating bereavement**

The process of bereavement is also a process of rebuilding social structures and it falls to humanitarian organizations to facilitate this process by:

- collaborating with all of the components that make up society
- supporting local groups, in particular women's groups and the families of the missing
- helping families to arrange funerals for their loved ones and enabling them to achieve their grieving
- preventing psychological problems that can inhibit the grieving process; managing distress and depression and preventing people from withdrawing into themselves.

➤ **Political Authorities and Belligerents must**

- guarantee the civilian population the right to grieve and to bury their dead while respecting their personal and religious convictions;
- acknowledge the seriousness of the practice of mutilation of corpses and lack of respect for the dead;
- undertake all possible methods in order to recover, identify and return the human remains of persons killed in combat;
- recognize the specific rights of the families of missing persons as well as victims of violations.

It is not improbable, as stated by a certain number of interviewed persons, that women are better armed to manage the emotional aspect of the relation with the suffering of others. The men would need "to assure" and to reassure by wanting to control fully. However, one cannot control the reaction of distress of the person confronted with death and the suffering of a loved one.

A certain emotional shielding is necessary to face war and to continue to occupy the land of the living. The balance between opening up to another and abiding by principles which govern humanitarian work opens up some prospects to face these situations. Dialogue, interaction, and exchange are essential in order to avoid a rift between those who help and those who suffer.

2. Overcoming the tensions between family needs and judicial procedures

The aim of this study is to establish how to obtain information for the families and yet balance this priority with the objectives of achieving reconciliation and respecting legal obligations.

Based on ICRC experience, judicial mechanisms can sometimes hinder the ability of families to obtain information about their missing, and may also not satisfy a family's need for justice and acknowledgment, let alone lead to reconciliation. Because of this, it is important to be aware of the many non-judicial mechanisms that have the potential to help families obtain information about their missing, while still helping to satisfy a family's need for justice, acknowledgment and sometimes reconciliation as well.

Progress:

The study entrusted to the International Center for Transitional Justice (ICTJ), New York, has been delivered. It has been directed by Dr Vasuki Nesiah, senior associate and benefited of the individual and collective efforts of several ICTJ staff members.

This study examines how judicial and non-judicial mechanisms can address the needs and priorities of families of the missing. It begins with a brief introduction to the family priorities that have been identified in the broader project; it then goes on to discuss judicial and non-judicial mechanisms, and recommendations. Here is a summary:

While families of the missing share much in common with the needs and preferences of other victims of human rights, **their priority on information is perhaps their most distinctive concern**. There are three kinds of informational needs that are relevant here: the status and whereabouts of the victims, the procedural rules of judicial and non-judicial mechanisms that might address these cases, and advocacy strategies to pursue these cases.

Accountability is also a significant need and priority for families of the missing; accountability mechanisms could involve both judicial and non-judicial mechanisms to advance justice for victims and their families, who want the enormity of their loss and their justice goals to be taken into account. Many families of the missing place priority on addressing the accountability of perpetrators whose action or inaction led to and/or enabled cases of the missing to occur. Often families of the missing and related advocacy groups also call for accountability from those authorities who denied, stymied, or ignored efforts to pursue the informational, accountability, and acknowledgment needs of victims' families.

Acknowledgment is the third and final category of family needs and priorities that this paper highlights. When the cases of the missing are the result of criminal action or inaction by the (state or non-state) authorities, victims' families often want acknowledgment of the missing person's dignity and intrinsic value, that the crime has indeed occurred, that the authorities in question are directly or indirectly responsible for the crime, and of the steps that need to be taken to address the crime.

Judicial mechanisms refer to *routine* criminal justice processes. They vary widely in different legal systems, different socio-historical contexts, different interpretive traditions, etc. The study presents the discussion of how reasonably well functioning judicial mechanisms address, or could address, family needs by focusing on each of the three categories of family needs and preferences.

Investigations pursuant to court actions can marshal the resources and authority of the state in procuring information regarding the perpetrators of the crime and the immediate circumstances of the crime itself. In some cases judicial investigations may meet the goals of families; in other cases, however, these interests may diverge and judicial mechanisms maybe pulled between victims' need for **information** and prosecutorial goals of identifying those who can be proven to be legally culpable.

Judicial mechanisms are seen as the paradigmatic modality for providing victims' families an effective route to holding the perpetrators **accountable** for their actions. However, given the resource-intensive nature of the criminal justice process, judicial systems may not always have the institutional capacity to meet the accountability goals of victims' families.

Judicial mechanisms can be a symbol of the state's **acknowledgment** of the violation and its direct or indirect culpability. However, families of the missing may experience the procedural hurdles entailed in judicial findings as holding "acknowledgment" hostage to legal process.

In sum, while judicial mechanisms perform an important role and have the potential to further many priorities of families of the missing, routine criminal justice mechanisms are also often inadequate to the enormity of the needs of families.

In the study, "**non-judicial mechanisms**" is an open-ended category that incorporates a diverse array of initiatives under its umbrella, such as:

1. *Combinations of Rewards, Incentives, and Threats to Encourage Cooperation From Reluctant Witnesses and Perpetrators;*
2. *Special Prosecutors, Truth Commissions, and Other Commissions of Inquiry;*
3. *Investigation and Reporting by Non-governmental Human Rights NGOs, Whether National or International;*
4. *International Fact-finding by UN and Regional Bodies;*
5. *Reparation Programmes, Whether Symbolic or Material, National or International;*
6. *Institutional Reforms;*
7. *Indigenous Forms of Truth-Seeking, Justice, and Reconciliation;*

There is a need for a plurality of mechanisms to fulfill the needs of families of missing people.

There should be recognition by State authorities and other entities involved that victim families may have diverse and even divergent needs, and therefore are best served by a plurality of mechanisms rather than any single path. Judicial mechanisms and non judicial mechanisms are not necessarily two alternative paths; rather they need to find common protocols for sharing of information and other resources to address families' needs for information, accountability, and acknowledgment. To maximize effectiveness, there is a need for coordination of those diverse mechanisms, and collaboration between different institutions addressing different aspects of victim needs and priorities.

On this basis recommendations are drafted, in particular for State actors regarding:

- instituting and enhancing the rights of families in addressing cases of the Missing;
- addressing family needs and priorities through a range of mechanisms;
- addressing family needs through reparation programmes;
- reforming State institutions.

3. Evaluation of existing mechanisms to solve issues related to people unaccounted for

In the framework of the project The Missing, identifying and recommending proper and efficient mechanisms for resolving problems of missing people is decisive. To proceed, ICRC feels the necessity to have at its disposal a study on the already existing mechanisms to clarify the fate of people unaccounted for, taking into account:

- their mandate, their structure, the actors involved and their respective responsibilities
- the resources issue (human resources, expertise, finance)
- the perception of the mechanisms by selected directly concerned actors.

The study was entrusted to Prof. Marco Sassoli, Université de Québec à Montreal, Canada. The study should describe:

- how the mechanisms work
- their results in practice
- their strengths & weaknesses (with reasons)
- and include recommendations.

Main mechanisms to be considered are:

- ICRC bilateral approaches
- Tripartite Commissions / Working groups including the ICRC as neutral intermediary
- The UN HR Working group on enforced disappearances and other activities of the UNHCHR
- Special UN SG mechanism
- Truth Commissions
- National HR Commissions
- If appropriate, other mechanisms invited to attend the Workshop *"Mechanisms to solve issues on people unaccounted for"*.

The study is conducted in four phases:

1. Production of some preparatory documents (which will be put at the disposal of the workshop mentioned under point 2 by representatives of different mechanisms and by experts).
2. Exploitation of the result of a workshop on *"Mechanisms to solve issues on people unaccounted for"* to be held at ICRC Ecogia Training center on 19-20 September 2002.
3. If necessary, qualitative interviews of some selected directly concerned actors, i.e. participants at the workshop or other persons responsible for any mechanism.
4. Final report.

Progress:

Phase 1 of the study has been completed. The above mentioned preparatory papers for the workshop on *"Mechanisms to solve issues on people unaccounted for"* (cf. Workshop 6, above) were submitted and may be summarized as follows:

Paper 1¹: The ICRC as a mechanism to solve issues on people unaccounted for

1. If International Humanitarian Law (IHL) were respected, few persons, mainly soldiers, would be victims of conflict-related disappearances.
2. The ICRC contributes through its traditional activities to the respect of IHL. This prevents disappearances. Some of those activities could be systematized and some specifically disappearance-related activities could be added, such as:
 - a) The ICRC should put more emphasis on the rules aimed at reducing disappearances in its dialogue with relevant authorities and leaders, and encourage them to take appropriate measures, preventively and at the outbreak or in the course of a conflict.
 - b) In the course of activities aimed at protecting and assisting persons detained in relation to armed violence, the ICRC should systematically collect certain information including - where appropriate - witness reports on death before or after arrest; furthermore, it could collect - where feasible and appropriate - personal data of beneficiaries of ICRC assistance, recipients and senders of RCMs for example, in view of facilitating a subsequent handling of tracing requests.
 - c) The ICRC should systematically collect tracing requests and submit them to the responsible authorities since the beginning of a conflict if and when the persons sought by their relatives cannot be found neither through the registration of people detained nor through the exchange of RCMs. The information collected could already include certain ante mortem data, which may be easily lost. Whenever possible, the ICRC should try to find an answer through field tracing - as it already does, in certain contexts.
 - d) While collecting those requests, and as long as they are not answered, families should be kept regularly informed about applicable provisions of IHL, ICRC tracing methods, the responsiveness of belligerents, the chances of success, and the ICRC's evaluation of whether the missing persons can be found alive. Information on methods of forensic identification and their chances of success may be added.
 - e) Such contact with families allows the ICRC to assess their genuine needs. It is recommended that the ICRC itself only exceptionally undertake programmes for the psychological, material and legal support to families of missing persons. They should never go beyond answering problems specific to this category, nor delay the mourning process.
 - f) Sometimes the ICRC has induced the parties to establish multilateral or tripartite mechanisms to clarify the fate of missing persons. As far as this declared purpose is concerned, those mechanism did not yield a lot of results. They should only be established, mainly to discuss policy (including on exhumations) and to favor cooperation, when former belligerents can be expected to have a genuine political will to clarify the fate of persons who went missing under their control. They are not appropriate fora to obtain answers to individual tracing requests.
 - g) Exhumations and forensic identification may provide answers, if the (former) belligerents cooperate. When the ICRC is involved in the transfer of human remains, it should insist on identification and transfer of the remains to the family. It is not recommended that the ICRC itself engages in exhumation and forensic identification activities, but rather facilitate them (e.g. joint exhumations by (former) belligerents) and provide advice and expertise to make sure that the needs of the families are taken into account.

The paper supports the ICRC objective to adopt uniform operational internal guidelines, which should be respected in all contexts unless there are objective, specific reasons for the contrary. Such guidelines would aim to make sure that the problem is dealt with equally all over the world, since the beginning of a conflict, and in parallel to (and mainstreamed into) all other activities.

Paper 2²: Truth Commissions as mechanisms to solve issues on people unaccounted for

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

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

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

1. Credibility and report of the commission

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

2. Access to and collection of information

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

3. Financial and human resources

- Provide the commission with resources and staff to make individual investigations.
 - Provide the commission with sufficient resources and staff to exhume and identify corpses (traditional techniques, DNA, etc.).
 - Provide the commission with financial resources to assure the independence and continual functioning of the commission.
 - Donor countries and international financial institutions should consider supporting truth commissions in developing countries financially and by setting up fora where the latter can exchange experience, including on methods to search for persons unaccounted for.
-

4. Search for persons unaccounted for and their remains

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

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

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

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

Paper 3³: National Human Rights Commissions as mechanisms to solve issues on people unaccounted for

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

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

1. Mandate

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

2. Functioning and powers

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

3. Financial and human resources

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

4. Independence, transparency and credibility of the commission

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

International conference

The themes, conclusions and recommendations of these various fora will be presented at an international conference of governmental and non-governmental experts to be held in Geneva at the *Centre de Conférence internationale de Genève* (CCIG) on 19-21 February 2003.

The President of the Conference will be:

- Mr. Yves Sandoz,
Doctor in International Public Law

The President of the Drafting Committee will be:

- Amb. Nicolas Michel,
Director, Direction for International Public Law, Federal Department of Foreign Affairs, Switzerland

Preparations for this conference have started. Invitations to more than 300 governmental and non-governmental experts have been sent. As background information, participants will have at their disposal the following documentation :

- a) "ICRC report - Summary of the conclusions arising from events held prior to the international conference of governmental and non-governmental experts (19-21 February 2003)"
- b) "The legal protection of personal data & human remains, Electronic Workshop, 02.04.2002 - 06.05.2002: Final report and outcome"
- c) "Member of armed forces and armed groups: identification, family news, killed in action, prevention, Workshop, 06.05.2002 - 07.05.2002, Ecogia ICRC Training Center - Geneva - Switzerland: Final report and outcome"
- d) "Human remains & forensic sciences, Electronic Workshop, 02.2002 - 03.2002; Human remains: Law, politics & ethics, 23.05.2002 - 24.05.2002 and Human remains: management of remains and of information on the dead, 10.07.2002 - 12.07.2002, Workshops, Ecogia ICRC Training Center - Geneva - Switzerland: Final report and outcome"
- e) "Support to families of people unaccounted for, Workshop, 10.06.2002 - 11.06.2002, Ecogia ICRC Training Center - Geneva - Switzerland: Final report and outcome"
- f) "Means to prevent disappearances & to process missing cases, Workshop, 24.06.2002 - 26.07.2002, Ecogia ICRC Training Center - Geneva - Switzerland: Final report and outcome"
- g) "Mechanisms to solve issues on people unaccounted for, Workshop, 19.09.2002 - 20.09.2002, Ecogia ICRC Training Center - Geneva - Switzerland: Final report and outcome"
- h) "Mourning process & commemorations, Study, Report and recommendations, under the direction of Yvan Droz, doctor in ethnology, *chargé de cours* at Graduate Institute of Development Studies (IUED); with the collaboration of Sylvain Froidevaux, doctor in social sciences, under IUED mandate"
- i) "Overcoming the tensions between family needs and judicial procedures, Study, Report and recommendations, by Ms Vasuki Nesiah, Senior Associate, International Center for Transitional Justice"
- j) "Study on existing mechanisms to clarify the fate of people unaccounted for - Report and recommendations, under the direction of Marco Sassòli, Professor at the Faculty of Political Science and Law of the University of Quebec in Montreal, Quebec, Canada with the collaboration of Jean-François Rioux, Professor at the Faculty of Human Sciences of the University of Saint-Paul, Ottawa, Canada".

Background documents are available as soon as published on the extranet *The Missing*. One full set of documents (in English and/or French) will be provided to each member to the Conference at registration.

- k) **Since 1 October and till 30 November 2002**, the document "*ICRC report - Summary of the conclusions arising from events held prior to the international conference of governmental and non-governmental experts (19-21 February 2003)*" is available on the Missing extranet site in a draft English version to be commented and completed by experts who participated in the workshops and studies. Its final version will be available end of January 2003 in English and

On 15 October and till 30 November 2002, the *Draft “Declaration The Missing and their families: the right to know* will be available on the extranet *The Missing* in its English version 0 to be commented and completed by experts and future participants to the Conference. Its final draft version to be submitted to the conference for adoption will be available end of January 2003 in English and French.

The Rules of Procedure for the Conference have been defined and are available in the extranet site, as is the provisional programme of the Conference.

Conclusion

The ICRC is pleased to note that the issue and its efforts have found active and constructive response among governmental and non-governmental experts which substantially contributes to the debate on the topics raised.

Recommendations and best practices so far defined are straight to the point, victim-oriented and operational. They should be directly useful both to:

- individuals and organizations working in the political, humanitarian and human rights fields and active on the ground in situations of armed conflict or internal violence;
- governments involved in developing international law and preventing or resolving conflicts, especially within the framework of the United Nations - for example through its Human Rights Commission - or within the International Red Cross and Red Crescent Movement - for example through the International Conference of the Red Cross and Red Crescent.

The Missing Project is carried out under the coordination of the ICRC's Protection Division. Costs associated with this project are covered by the ICRC's headquarters budget.

**For further information, please contact:
the ICRC's Project team « The Missing »
(head of project: Ms. Sophie Martin)
email: >themissing.gva@icrc.org<**