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THE NEED TO DEAL WITH ALL MISSING PERSONS INCLUDING THOSE MISSING AS A RESULT OF ARMED CONFLICT, DISASTERS, MIGRATION, HUMAN TRAFFICKING, AND HUMAN RIGHTS VIOLATIONS (INCLUDING ENFORCED DISAPPEARANCES) IN INTERNATIONAL AND DOMESTIC LAW AND PROCESSES

JEREMY SARKIN*

Abstract

This article examines the issues concerning missing people in the domestic and international context. Who they are, how many have gone missing and for what reasons people go missing, are analysed. The definition of what is, and what should be, a missing person is interrogated. It is argued that the present definition, that only includes people missing as a result of armed conflict, is too narrow. It is contended that who the missing are, ought to include those missing as a result of enforced disappearances, disasters, migration, human trafficking, organised crime, various acts of violence and other events. It is claimed that there is a limited understanding of the global dimension, or the true scale of the problem of the missing and the disappeared. It is argued that international and domestic processes to deal with the missing is inadequate and needs to be reformed. Recommendations are made to ensure that law reform occurs, and various processes are put into place internationally and domestically, including new institutions and new standards. It is suggested that there is a need for an international mechanism and standing capacity to provide a structured and sustainable response, including forensics, for all types of missing persons. Protocols are needed to develop cooperation strategies and the technical infrastructure required. It is argued that a global forum on

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missing persons should be created and round table meetings and other events could occur annually, to ensure the voices of families and survivors, international and other organisations as well as the sciences are heard.

Resumen

Este artículo examina las cuestiones relativas a las missing persons en el contexto nacional e internacional. Se cuestiona quiénes son ellos, cuántos han desaparecido y por qué razones las personas desaparecen. Se interroga el concepto de lo que es y lo que debería ser una missing person. Se argumenta que la definición actual, que sólo incluye las personas desaparecidas a raíz de un conflicto armado, es demasiado restringida. Se afirma que deben incluirse a los que desaparecen como consecuencia de las desapariciones forzadas, los desastres, la migración, la trata de personas, el crimen organizado, diversos actos de violencia y otros eventos. Se afirma que hay una comprensión limitada de la dimensión global, o la verdadera magnitud del problema de los missing y los desaparecidos. Se argumenta que los procesos nacionales e internacionales para hacer frente a los missing es insuficiente y necesita ser reformado. Se recomienda reformar la ley, y ejecutar procesos a nivel internacional y nacional, incluir nuevas instituciones y nuevos estándares. Se sugiere que hay una necesidad de un mecanismo internacional y locus standi para proporcionar una respuesta estructurada y sostenible, incluyendo la medicina forense, para todo tipo de personas desaparecidas. Se necesitan protocolos para desarrollar estrategias de cooperación y la infraestructura técnica necesaria. Se argumenta que se debe crear un foro global sobre las missing persons y que se organicen mesas redondas y otros eventos cada año, para asegurar que se escuchen las voces de las familias y sobrevivientes, organizaciones internacionales y otras organizaciones, así como las ciencias.

1. INTRODUCTION

Issues concerning missing persons, including people that have been disappeared, are massive and cause ongoing problems for all states.¹ Tens of millions of cases of missing and disappeared persons have been reported.² The number includes victims of armed conflict situations as well as persons that have been subjected to human rights abuses. However, many cases are not reported for a variety of reasons. People go missing as a result of disasters, migration, human trafficking, organised crime, various acts of violence and a range of other events.

¹ H. Parr, O. Stevenson, *Families living with absence: searching for missing people* (Glasgow, University of Glasgow, 2013).

² See J. Sarkin, "Putting in Place Processes and Mechanisms to Prevent and Eradicate Enforced Disappearances Around the World", *South African Yearbook of International Law* (2015).

In 2015, as a result of migration into Europe, many people have gone missing during their travels to get there. Many have drowned on their perilous journeys to enter Europe. However, for most of them their families have no knowledge that this may have occurred, even though they may suspect some type of harm has befallen them, when they do not hear from their loved one for some time. When this happens, the family really has nowhere to go. In places where there is no upheaval, they may report it at their local police station, but the case is unlikely to attract much attention. If the person is to be found, or news about them transmitted to the family, there needs to be somewhere that the local case is reported internationally so that information collected at the international level can be transmitted to the local level and vice versa.

There needs to be an international system to deal with such eventualities. However, it also needs to be realised that millions of people go missing because of events that occur in everyday society all the time all around the world. Generally, it is those cases that domestic authorities focus on, often to the exclusion and detriment of missing people from other countries that are present in their country. Thus, while all countries deal with missing people, they do not really search for the missing when the case concerns migrants, human trafficking, organised crime, etc., even when they directly affect their own citizens. States usually only deal with cases of people who go missing domestically, such as cases where people are abducted or murdered, where people simply cannot be located, when elderly people wander off³ or children run away.⁴

Developments over the last two decades have seen an evolution of how the issue of the missing has been addressed in practice, particularly following conflict and disasters.⁵ Widespread wrongs of the past, especially persons who have been disappeared (sometimes euphemistically called missing persons), are marked by a glaring absence of the rule of law⁶ and human rights.⁷ It is therefore important that

³ G. Petonito, G.W. Muschert, D.C. Carr, J.M. Kinney, E.J. Robbins, J. Scott Brown, "Programs to Locate Missing and Critically Wandering Elders: A Critical Review and a Call for Multiphasic Evaluation", 53(1) *Gerontologist* (2013), p. 17–25.

⁴ K. Kempf-Leonard, P. Johansson, "Gender and runaways: Risk factors, delinquency, and juvenile justice experiences", 5 *Youth Violence and Juvenile Justice* (2007), p. 308–327. See also K. Dedel, *Juvenile Runaways. Problem-oriented Guides for Police. Problems-Specific Guides Series No. 37* (Washington DC, Office of Community Oriented Policing Services US Department of Justice 2006). See also F. Mitchell, "Can I come home? The experience of young runaways contacting the Message Home Helpline", 8 *Child and Family Social Work* (2003), p. 3–11.

⁵ M.J. Alvarez-Cubero, M. Saiz, L.J. Martinez-Gonzalez, J.C. Alvarez, A.J. Eisenberg, B. Budowle, J.A. Llorente, "Genetic identification of missing persons: DNA analysis of human remains and compromised samples", 79(5) *Pathobiology* (2012), p. 228–238.

⁶ J. Sarkin, "The Interrelationship and Interconnectness of Transitional Justice and the Rule of Law in Uganda: Pursuing Justice, Truth, Guarantees of Non-Repetition, Reconciliation and Reparations for Past Crimes and Human Rights Violations", 7(1) *Hague Journal on the Rule of Law* (2015), p. 111–139.

⁷ T. Scovazzi, G. Citroni, *The Struggle Against Enforced Disappearance and the 2007 United Nations Convention* (Leiden, Martinus Nijhoff Publishers, 2007), p. 26.

post-conflict reconstruction⁸ and reconciliation⁹ involves the reinstatement of the rule of law and human rights as constitutive elements of developing a peaceful society.¹⁰

Unfortunately, the international legal framework to deal with the missing is sporadic and disjointed. It is dealt with in separate laws and then does not specifically focus on and deal with missing people substantively and holistically. The groups affected are often dealt with separately and then it is not often done in a way that emphasises and focuses on the rights of those who are missing and those affected by the occurrence. The laws have not kept pace with the major developments on the ground. They need to be re-examined, to ensure they are also dealing with the issues concerning the missing specifically. Besides the laws, there needs to be a greater focus on the missing by a range of role-players, especially at the international level. However, because the missing persons issue is also often a regional and sub-regional issue, the processes at those levels ought to be given more attention. This cannot be done however without the cooperation from national laws, mechanisms and processes. It is recommended that processes to deal with the missing need to start at the domestic level. It is the role of the state that is paramount, but the state needs the support of others. The international community also has a significant role as today many missing people have crossed borders usually voluntarily, but at times involuntarily such as those people that have been trafficked. Crucially, families of those that have gone missing need laws and processes to assist them. Few countries have adequate systems in place. The international community could assist in this regard by mandating what is necessary at the domestic level and setting up systems international to assist families whose own state does not sufficiently assist. International law ought to be updated to deal with the challenges that have emerged in this regard. Some degree of coherence is also necessary between international human rights law and international humanitarian law to ensure that there are no gaps and lacunae and that all missing people have processes that cover their cases.

This article argues that the missing, from a definitional point of view, are usually seen as those who have gone missing as a result of armed conflict. A range of role-players, usually include only those who have gone missing, or have disappeared as a result of international or internal armed conflict into the definition of the missing. The article therefore examines the definition of who a missing person is, and argues that the present accepted definition, only really includes those missing as a result of armed conflict, although it is argued by many that the issues of the missing are also

⁸ J. Milliken, K. Krause, "State Failure, State Collapse, and State Reconstruction: Concepts, Lessons and Strategies", 33(2) *Development and Change* (2002), p. 753-774.

⁹ J. Sarkin, "Understanding the Journey to Reconciliation in Transitional Societies: Using the Metaphor of a Motor Vehicle Road Trip to Understand South Africa's Path (Process) to Political Reconciliation", *International Journal of Renaissance Studies* (2015).

¹⁰ See C. Call, E. Cousens, "Ending Wars and Building Peace: International Responses to War-Torn Societies", 9 *International Studies Perspectives* (2008), p. 1-21; E. Baines, "Spirits and Social Reconstruction after Mass Violence: Rethinking Transitional Justice", 109(436) *African Affairs*, p. 409-430.

covered in international human rights law and elsewhere. The article argues that in practice however, those sought for by a range of international actors, should include those who cannot be found as a result of conflict, human rights violations, or disasters. Thus, it is argued that the definition of the missing, and the categories that ought to be included and looked for, should cover all people who go missing. It is argued that the missing should include everyone who cannot be located regardless of why they have gone missing, whether from migration, displacement, organised crime, human trafficking, disappearances, homicides¹¹ abductions, accidental deaths, terrorism or other reasons. The article does not argue that the legal definition of each ought to be the same, or that each category ought to be dealt with in the same way, or that the rights of the families of each type of missing person ought to be the identical. There are differences between the various categories, but what they have in common is that they all cannot be found. For this reason there should be laws and processes, domestically and internationally, to ensure that where practically possible there is a search for the person. This will not always be possible, as where there has been some major catastrophe finding the person may be impossible. At the minimum the person's name ought to be registered in an accessible database, and where practically feasible, a search should be conducted. Standards ought to be set in this regard.

The article further examines the difference between a missing person and a disappeared person. It is argued that while the term missing is often used to cover cases of disappearances, the correct term that ought to be used rather, and more correctly, is disappeared. The article argues that while the formal definition of an enforced disappearance covers only the categories where the disappearance occurs as a result of some state action,¹² the conduct of non-state actors should also be covered and those missing as a result of that occurrence should also be covered, even if not called a disappearance. The article does not argue that all categories of persons who cannot be found ought to be called the missing. It argues that people who have been disappeared should be called the disappeared. However, the disappeared should be covered as a category of the missing for purposes of searching and finding them. This is needed, as at present there are inadequate processes to register and search for even disappeared people. Thus, all categories of persons who cannot be found ought to be dealt with, with some being called the missing and others the disappeared. The article also does not call for the same legal processes to be applied to all categories, such as those that have disappeared, but that there should be a system internationally to deal with all missing people, regardless of the cause, so that relatives and others have a method to try and find them.

¹¹ G. Newiss, "Estimating the Risk Faced by Missing Persons: A study of Homicide Victims as an Example of an Outcome-Based Approach", 6(1) *International Journal of Police Science and Management* (2004), p. 27–36.

¹² M.F. Perez Solla, *Enforced Disappearances in International Human Rights* (London, McFarland and Company Inc. Publishers, 2006).

The article argues that there has been, and still is, a limited understanding of the global dimension or the true scale of the problem of the missing and disappeared. This is partly because in general there has been little academic attention to the issue. Where the literature exists, more often on the disappeared, it has often focused on a specific country and the issues that exist in that context. Very little consideration has been focused on the generic issues of the missing specifically. This is true in all legal disciplines including human rights law and transitional justice. Specifically in the discipline where the context of the missing has the most relevance and applicability, humanitarian law, there has been very little focus on the legal and human rights issues concerning the missing. While, there has been some attention to component aspects of the missing, such as disappearances, migrant issues, human trafficking, disasters etc. there has been little specific focus on the issues concerning the missing as a whole. The article argues that addressing the issue of the missing and the disappeared is critical from a number of vantage points, including the rule of law, human rights, humanitarianism, and transitional justice, including notions of truth, justice, and reparations. These are all issues of vital concern¹³ even if not equally applicable to each category. All families want to know what happened to their loved ones regardless of the cause of their being missing. However, the rights applicable to the different categories would be different. In the case of enforced disappearance, there is someone who knows the truth and is therefore accountable for disclosing it and making it known to the family and society at large (therefore there exists a right to know the truth). In the case of natural disasters, it is unfortunately often impossible to establish the truth about what happened to the victims and to locate, exhume or identify their mortal remains (e.g. tsunami). What is unclear is what are the rights of persons to truth where they have been kidnapped or trafficked? Thus, at present the family of a disappeared person would be able to rely on the right to the truth more so than a person who went missing because of other events, because of the present legal regime but also because the practicalities of the circumstances. The legal regime applicable to the disappeared gives certain rights (such as truth, justice and reparations) that are not applicable to other cases in the same way. There should be greater coherence on these matters to other categories, but not all in the same way, to provide greater rights to those victims as well, depending on the circumstances.

The article therefore examines who the missing are and explores issues concerning the circumstances of persons going missing, whether as a result of war, or human rights abuses. It includes disappearances, as well as disasters, organised violence, and migration. It describes missing person processes across the various scenarios with regard to their legal, technical and societal implications and makes recommendations to improve the situation concerning the missing around the world.

¹³ M. Breen-Smyth, *Truth Recovery and Justice After Conflict: Managing Violent Pasts*. Routledge Studies in Peace and Conflict Resolution (Abingdon, Routledge, 2007).

2. THE MISSING PERSONS ISSUE IN INTERNATIONAL CONTEXT

International and internal armed conflict in the twentieth century has seen tens of millions of people being killed and tens of millions of people going missing. It is believed that more than 70 million people were killed alone during World War II.¹⁴ The number of missing is hard to quantify but it is believed, for example, that more than four million people went missing on the Eastern Front alone although about 26 million people were killed there.¹⁵ During the 1990s alone, almost 4 million people died in wars, 90 percent of them civilians.¹⁶ A 2008 report, while noting that its figures were conservative, estimated that between 2004 and 2007, at least 208,300 violent deaths occurred in armed conflicts – an average of 52,000 people each year.¹⁷ This does not fully take into account the many people who went missing. Conflict situations noticeably escalate the exposure of civilians. Particularly vulnerable are women,¹⁸ children, the elderly, migrants and the displaced. These groups have a higher rate of risk of going missing.¹⁹

In the 20th century tens of millions of people suffered the fate of enforced disappearance as a result of mass atrocities that occurred in many places including, but not limited to, Armenia, Bosnia²⁰ and Herzegovina, Burundi, Cambodia,²¹ China, the Democratic Republic of Congo, Ethiopia, Guatemala, India, Indonesia, Iraq,²² Libya, Nigeria, Pakistan, Rwanda,²³ the Soviet Union, Sri Lanka, Syria, Turkey,

¹⁴ L. Ash, “Digging for their lives: Russia’s volunteer body hunters”, 13 January 2014, BBC News, Russia, <www.bbc.com/news/magazine-25589709>.

¹⁵ Ibid.

¹⁶ See further M. Kaldor, *New and Old Wars: Organized Violence in a Global Era* (Stanford, Stanford University Press, 2007).

¹⁷ R. Ratnayake, O. Degomme, Ch. Altare, D. Guha-Sapir, C. Bijleved, S. Mehlbaum, L. Hoex, *The Many Victims of War: Indirect Conflict deaths* (Geneva, Small Arms Survey, Geneva Declaration Secretariat, 2008).

¹⁸ See further F. Ni Aoláin, “Exploring a Feminist Theory of Harm in the Context of Conflicted and Post-Conflict Societies”, 35 *Queen’s Law Journal* (2009), p. 219.

¹⁹ WHO (World Health Organization), *Preventing Violence and Reducing its Impact: How Development Agencies and Governments Can Help* (Geneva, WHO, 2008).

²⁰ T. Blumenstock, “Legal Protection of the Missing and Their Relatives: The Example of Bosnia and Herzegovina”, 19 *Leiden Journal of International Law* (2006), p. 773.

²¹ M. Klinkner, “Forensic Science for Cambodian Justice”, 2 *International Journal of Transitional Justice* (2008), p. 227–243.

²² On dealing with the situation in Iraq, see D. Congram, J. Sterenberg, “Grave Challenges in Iraq”, in S. Blau, D. Ubelaker (eds.), *Handbook of Forensic Anthropology and Archaeology* (Walnut Creek, Left Coast Press 2009), p. 441–454; S. Corder, R. Coupland, “Missing People and Mass Graves in Iraq”, 362 *Lancet* (2003), p. 1325–1326. On the numbers, see Iraq Body Count (last accessed 5 January 2014), <www.iraqbodycount.org>.

²³ E. Jessee, “Promoting Reconciliation through Exhuming and Identifying Victims in the 1994 Rwandan Genocide”, *CIGI-AI Policy Brief No. 2* (2012), <www.cigionline.org/series/cigi-africa-initiative-policy-briefs>.

Uganda and Zimbabwe.²⁴ Most people killed in those events have never been specifically accounted for. Their families still await news about their specific fate and whereabouts.²⁵ In many cases this information, for a variety of reasons, cannot or will not be revealed.²⁶ This has not only a dramatic effect for these societies but also impacts negatively on the individuals and families left behind.²⁷ Enforced disappearances are however not only an issue of the past.²⁸ While hundreds of thousands disappeared in Latin America in the 1960s and 1970s, subsequent to that period there have been many instances of disappearances. New cases are reported all over the world on a regular basis. For instance – in 2014 the UN Inquiry on North Korea (DPRK) reported about 250,000 disappearances having occurred there.²⁹ Tens of thousands of these people are still being held in North Korean detention camps.³⁰ In Sri Lanka considerable numbers of people disappeared during the two-and-a-half decade long civil war.³¹ The government has also been accused of disappearing tens of thousands of people at the end of the war in 2009.³²

The 2012 World Disasters Report noted that there were 364 natural disasters and 188 technological disasters (industrial, other accidents) in that year. Between 2000 and 2012 an average of 100,000 people were killed each year consequent to disasters. Locating people affected by these happenings, and finding out what happened to them, are critically important not only for their families, but also for the society that they come from as a whole.

It is estimated that there are 27 million human trafficking victims at any given time. 40,000 victims are identified for each year.³³ The numbers are merely projections,

²⁴ See further J. Sarkin, “Why the Responsibility to Protect (R2P) as a Doctrine or (Emerging) Norm to Prevent Genocide and Other Massive Human Rights Violations is on the Decline: The Role of Principles, Pragmatism and the Shifting Patterns of International Relations”, 47(2) *Politorbis: The Swiss FDFA Journal* (2010), p. 51–64.

²⁵ *Missing People. An uncertain hope: Missing people's overview of the theory, research and learning about how it feels for families when a loved one goes missing* (London, Missing People Charity, 2012).

²⁶ See for example W.R. Long, “Death Flight Tale Rekindles Memories of ‘Dirty War’: Argentina: Ex-officer describes throwing leftists out of planes into sea. Thousands believed victims of this policy”, *Los Angeles Times*, 13 March 2013.

²⁷ J. Sarkin, “Dealing With Enforced Disappearances in South Africa (Focusing on the Nokuthula Simelane case) and Around the World: The Need to Ensure Progress on the Rights to Truth, Justice and Reparations”, *Speculum Juris* 2015(1).

²⁸ Sarkin, *supra* n. 2.

²⁹ UN Human Rights Council, Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea, A/HRC/25/CRP.1, 7 February 2014.

³⁰ N. Cumming-Bruce, “U.N. Panel Says North Korean Leader Could Face Trial”, *New York Times*, 17 February 2014, <www.nytimes.com/2014/02/18/world/asia/un-panel-says-north-korean-leader-could-face-trial.html?_r=0>.

³¹ J.C. Weliamuna, “Discovering the white van in a troubled democracy: An analysis of ongoing “abduction blueprint” in Sri Lanka”, 25 April 2012, <<http://dbsjeyaraj.com/dbsj/archives/5855>>.

³² UN Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011.

³³ Migration and integration – Basic concepts and definitions, <<http://social.coe.int/en/cohesion/action/publi/migrants/concepts.htm#back1>>.

as accurate figures are not known. These estimations need to be included in the category of missing persons.

The process of people migrating also has a severe impact³⁴ on the number of people going missing globally.³⁵ In 2013, there were 232 million, or 3.2 percent of the world's population figures were defined as international migrants.³⁶ There were also 740 million internal migrants³⁷ and 72 million enforced migrants of whom 15 million are refugees.³⁸ It was reported that there were 28.8 million IDPs in 2012, and more than 10 million stateless people. Political instability, conflict and violence have seen an increase in the number of asylum seekers, displaced person, refugees and migrants from Africa alone.³⁹ Many migrants die and go missing en route from their places of origin.⁴⁰ They are vulnerable⁴¹ all along the migratory route from point of departure to their final destination. They are especially vulnerable at their destination because of the likelihood of them being targeted for crime;⁴² because they are less likely to receive protection in the country they are in, and unlikely to have access to legal assistance. While the International Convention on Migrant Workers has increased the protections available in theory, in practice in many parts of the world, the rights

³⁴ See further M.P. Cox, M.F. Hammer, "A question of scale: Human migrations writ large and small", 8 *BMC Biol.* (2010), p. 98–102.

³⁵ K. Jacobsen, L.B. Landau, "The Dual Imperative in Refugee Research: Some Methodological and Ethical Considerations in Social Science Research on Forced Migration", 27(3) *Disasters* (2003), p. 185–206; A. Holobinko, "Theoretical and Methodological Approaches to Understanding Human Migration Patterns and their Utility in Forensic Human Identification Cases", 2 *Societies* (2012), p. 42–62.

³⁶ United Nations Department of Economic and Social Affairs of the United Nations Secretariat Population Division Population Facts No. 2013/2.

³⁷ M. Bell, S. Muhidin, "Human Development Research Paper", 30 *Cross-National Comparisons of Internal Migration* (2009), p. 55.

³⁸ On issues that would impact on this see K. Koser, "The Smuggling of Refugees", in D. Kyle, R. Koslowski (eds.), *Global Human Smuggling: Comparative Perspectives* (Baltimore, John Hopkins University Press, 2011, 2nd edition).

³⁹ Report of the Mechanism of the Special Rapporteur on the Rights of Refugees, Asylum Seekers, and Internally Displaced and Migrants in Africa since its Creation, Maya Sahli-Fadel, Commissioner, Special Rapporteur on Refugees, Asylum Seekers, Displaced Persons and Migrants in Africa, 52nd Ordinary Session of the African Commission on Human and Peoples' rights, Yamoussoukro, Cote d'Ivoire, 9–22 October 2012, <www.achpr.org/sessions/52nd/intersession-activity-reports/refugees-and-internally-displaced-persons>. As a result of the issues the African Commission created the mechanism of the Special Rapporteur on Refugees, Asylum Seekers, and Internally Displaced Persons at its 35th Ordinary Session held in Banjul, The Gambia, 21 May to 4 June 2004. Resolution ACHPR/Res.95 (XXXIX) 06 on the renewal of the mandate of the Special Rapporteur in 2006 expanded it to also include migrants.

⁴⁰ S. Klepp, "A Double Bind: Malta and the Rescue of Unwanted Migrants at Sea, a Legal Anthropological Perspective on the Humanitarian Law of the Sea", 23(3) *International Journal of Refugee Law* (2011), p. 538–557.

⁴¹ A. Pécoud, P. De Guchteneire, "International Migration, Border Controls and Human Rights: Assessing the relevance of a right to mobility", 21(1) *Journal of Borderlands Studies* (2006), p. 69–86.

⁴² On the vulnerability of migrants trying to get to the USA to criminals, see P. Villegas, "Stowaways Are Stranded in Mexico by Train Ban", *NY Times*, 10 May 2014, <www.nytimes.com/2014/05/11/world/americas/stowaways-are-stranded-in-mexico-by-train-ban.html?hp&_r=0>.

of migrants are severely limited as they are frequently discriminated against, abused and treated badly. As a result, they often go missing. There are few means for their families to search for them and to try and find out what happened to them.

3. THE NEED TO WIDELY DEFINE WHO THE MISSING ARE

Millions of people, in a variety of settings, and for a number of reasons, go missing each year. They go missing because of armed conflict, because of human rights violations, because they go missing on the migration route, they go missing because of human trafficking, because of organised crime as well as a variety of other reasons. The number of missing must be seen against the backdrop of the number of homicides that occur globally.⁴³ In 2012, there were 437,000 homicides around the world. 79 percent of the victims were men. More than half the victims were below the age of 30. About 95 percent of perpetrators were men.⁴⁴ The bodies of the victims of homicides not found are classified as missing.

In every country each year thousands of people go missing for a variety of reasons. Thus, the numbers depend on the context of the country. Where there has been conflict the numbers can be very high depending on the nature of the conflict and the number of people missing as a result. Where human rights violations have occurred, this also impacts on the issues of the missing. Thus, in Iraq, the government estimates that there are 500,000 missing people, while others estimate the numbers at more than a million.⁴⁵

In conflict situations missing persons take on a completely different dimension. In those places, many including combatants and civilians go missing for a variety of reasons. Where there is conflict a variety of people go missing, including children, for a variety of reasons, including forced recruitment into armed groups,⁴⁶ or because opposition groups abduct them.⁴⁷ Catastrophic events every year also cause many people to be killed, or go missing, in countries all around the world.

Generally speaking, persons who may have been killed may be deemed missing, because no one knows that they have died, or because their bodies cannot be found.

⁴³ Small Arms Survey, *Tracking national homicide rates. Generating estimates using vital registration data* (Geneva, Graduate Institute of International and Development Studies, 2012).

⁴⁴ United Nations Office on Drugs and Crime (UNODC), *Global Study on Homicide 2013* (Vienna, UNODC 2014), p. 5. The report indicates that of the 437,000 homicides, 36 percent took place in the Americas, 31 percent in Africa, 28 percent in Asia, five percent in Europe and a third of one percent in Oceania. Half of the total homicides take place in countries where 11 percent of world's population live.

⁴⁵ See <<http://uk.krg.org/genocide/pages/page.aspx?lngnr=12&smap=130000&pnr=38>>.

⁴⁶ See for example M. Fletcher, "UNICEF Supports Effort to Trace Missing Children in Post-Conflict Sri Lanka, UNICEF", 20 July 2011, <www.unicef.org/infobycountry/sri_lanka_59288.html>.

⁴⁷ An example is the abduction of the 276 school-girls by Boko Haram in Nigeria on 14 April 2014. See <www.nydailynews.com/news/world/british-forces-join-effort-find-kidnapped-nigerian-school-girls-article-1.1785811>.

Thus, depending on what caused them to go missing, many people cannot be found or identified.⁴⁸ The cause of the person not being able to be found has an impact on whether processes allow for the person to be sought. It also depends on whether the person was inside their own country when they went missing and where in the world the person goes missing as some countries have more will to do so and are better geared up to deal with the missing. A distinction also needs to be made for countries where resources are more plentiful and for countries where there has been conflict and human rights abuses.

Even in countries where there has been no conflict or no massive human rights violations there are large numbers of missing people. However, the figures are not complete, as many people who go missing are not reported. Some are not reported missing because sometimes when a person goes missing no one realises it. This is particularly true for migrants, or for people that go off for other reasons. At times, if a person's whereabouts are unknown they may not be reported missing for a variety of reasons including the fact their absence is not missed as they are supposedly working or visiting another country. They may have gone even to another part of the same country they are in. What this means is that they are not always missed for some time. But reasons for non-reporting, even if the person is known to be missing, include distrust of the system or concern that the person who reports the case may themselves then be harassed, or targeted, if they raise the alarm. This is specifically true of enforced disappearance cases. Generally speaking however, people who come from specific groupings such as the youth, the homeless, indigenous or minority peoples,⁴⁹ LGBT (lesbian, gay, bisexual, and transgender persons) people with intellectual disabilities, as well as people from different cultural and linguistic communities are less likely to be reported missing.⁵⁰

In spite of the limits in reporting people missing in the USA, according to the National Crime Information Center (NCIC), about 700,000 people are reported missing each year. However, underreporting remains a problem. In addition, those that have been human trafficked into the USA are usually not reported to the US even though they may have been reported missing in their home country. However it is recognised that even within the categories that are reported many people are not reported missing. In addition, people that have been human trafficked into the USA are usually not reported, as well as others such as undocumented migrants. Even migrants who are documented are often not reported missing.⁵¹ In the United Kingdom, it is estimated that 300,000 people go missing each year.⁵² In Australia at

⁴⁸ B. Olaisen, M. Stenersen, B. Mevag, "Identification by DNA analysis of the victims of the August 1996 Spitsbergen civil aircraft disaster", 15 *Nature Genetics* (1997), p. 402–405.

⁴⁹ See the Report of the Special Rapporteur on Indigenous rights on his mission to Canada.

⁵⁰ J. Svetcic, L. San Too, D. De Leo, "Suicides by persons reported as missing prior to death: a retrospective cohort study", *BMJ Open* (2012), p. 2.

⁵¹ See <www.popcenter.org/problems/missing_persons>.

⁵² N.R. Fyfe, O. Stevenson, P. Woolnough, "Missing persons: the processes and challenges of police investigation Policing and Society", *International Journal of Research and Policy* (2014).

the beginning of the 21st century, it was estimated that each year about 30,000 people went missing: this equates to one person every 18 minutes.⁵³ The number who went missing annually rose there to 35,000 by 2008.⁵⁴ While most missing people reported as such in Australia are found, and the whereabouts of 86 percent of the missing are detected within one week, the costs associated with this are about A\$70 million. In other words the costs connected to each reported missing person, amounts to approximately US\$2,360 there.⁵⁵ Obviously, the costs of dealing with the missing are high in every country. The costs do however depend on what efforts are made to find the missing and resources allocated to the task.

Generally speaking, every country deals with missing persons, defines who are missing people, and defines who are categorised as missing in a wide fashion. But in practice, domestic processes, including the police, usually do not deal always with all categories of the missing as some categories, including human trafficking are, for a variety of reasons hardly ever reported in the country where the person is to be found or went missing. However, in the UK, the Association of Chief Police Officers (ACPO) defines a missing person as “[a]nyone whose whereabouts is unknown, whatever the circumstances of disappearance. They will be considered missing until located and their well-being or otherwise established.”⁵⁶ Thus, in theory all missing people fall within the definition, however in practice many missing persons, especially in particular categories, are not reported missing so they are never searched for. Interestingly, it is noted by the ACPO in the UK that the “Police Service is not a tracing agency and there are specialist organizations that are better placed to do this.”⁵⁷ Unfortunately at the domestic level this is often the view, even though there are often few such organisations and those that exist often do not have the requisite resources to carry out searches adequately. It is also problematic that at times, the police will view a person as wanted, rather than missing, depending on whether the person is being sought because of an alleged involvement in a criminal matter, or because they are seemingly undocumented and therefore are seen have committed an offence. This often complicates the issue, even if the case is reported, which if the person comes from another state and is present because of migration, displacement, being a refugee or having being trafficked, often does not occur. However many domestic police authorities do not focus on matters such as human trafficking, those missing while involved in migration, or similar events. Generally, domestic police authorities in many parts of the world receive few such requests and when they do it often concerns

⁵³ M. Henderson, P. Henderson, C. Kiernan, “Missing Persons: Incidence, Issues and Impacts”, 144 *Trends & Issues in Crime and Criminal Justice* (January 2000), p. 1–6.

⁵⁴ National Missing Persons Coordination Centre, *Missing Person: Overview* (Canberra, Australian Federal Police, 2008), <www.missingpersons.gov.au/home>.

⁵⁵ Henderson, Henderson and Kiernan, *supra* n. 53, p. 1–6.

⁵⁶ Association of Chief Police Officers, *Guidance on the Management, Recording and Investigation of Missing Persons* (London, National Policing Improvement Agency, 2nd edition, 2010), p. 15.

⁵⁷ *Ibid.*, p. 16.

tourists. Families who try and report a person missing in a foreign country in their home country generally receive little assistance from the local authorities. Even if the case is reported to the embassy of the receiving state little assistance is obtained.

At the international level the definition about who constitute missing people has been the subject of different interpretations,⁵⁸ partly because the issues concerning the missing, at an international level concerns what has happened, at times, in a specific state, what happens in more than one state, and also what happens between states. International armed conflict, in other words conflict between states, and internal armed conflict concerning conflict intrastate, where people have gone missing, is the reason why the some of these organisations were established. Some organisations have focused solely on conflict and its consequences, and thus the missing, internationally, was seen to be an issue that occurred as a result of conflicts and other categories of the missing hardly received any attention.

The International Committee of the Red Cross (ICRC) has defined the missing as “all those whose whereabouts are unknown to their families or, based on reliable information, who are reported missing as a consequence of armed conflict, internal violence or internal disturbances.”⁵⁹ Elsewhere, and widening out the categories of the missing, by defining the missing more generally, the ICRC has noted that missing persons are “those whose whereabouts are unknown to his/her relatives and/or who, on the basis of reliable information, has been reported missing in accordance with the national legislation in connection with an international or non-international armed conflict, a situation of internal violence or disturbances, natural catastrophes or any other situation that may require the intervention of a competent State authority.”⁶⁰ However, in the journal of the ICRC, the *International Review – Red Cross*, in 2002,

⁵⁸ The term missing has also been applied to “missing women”, meaning the difference of possibly 100 million between the number of men and women in Asia because of girl babies that are aborted and because of the number of women or girls who die earlier than they ought to as compared to boys or men. See I. Attané, C.Z. Guilmoto, “Introduction”, in I. Attané, C.Z. Guilmoto (eds.), *Watering the Neighbour’s Garden: The Growing Demographic Female Deficit in Asia* (Paris, Committee for International Cooperation in National Research in Demography, 2007), p. 3. See further A. Sen, “More Than 100 Million Women Are Missing”, *New York Review of Books*, 20 December 1990, p. 37, 20, 61–66 and S. Klasen, C. Wink, “A turning-point in gender bias in mortality? An update on the number of missing women”, 28 *Population and Development Review* (2002), p. 285–312; Y. Cai, W. Lavelly, “China’s Missing Girls: Numerical Estimates and Effects on Population Growth”, 3(2) *The China Review* (2003), p. 13–29; M. Das Gupta, “Cultural versus biological factors in explaining Asia’s ‘missing women’: Response to Oster”, 32(2) *Population and Development Review* (2006), p. 328–332; E. Oster, “Hepatitis B and the Case of the Missing Women”, 113(6) *Journal of Political Economy* (2005), p. 1163–1216.

⁵⁹ ICRC, *Accompanying the Families of Missing Persons. A Practical Handbook* (Geneva, ICRC 2013), p. 16. It has also been stated by the ICRC that the missing are “all people unaccounted for as a result of an international or non-international armed conflict or internal violence”. M. Crettol, A.M. La Rosa, “The Missing and Transitional Justice: The Right to Know and the Fight against Impunity”, 88 *International Review of the Red Cross* (2006), p. 355.

⁶⁰ ICRC Guiding Principles / Model Law on the Missing Principles for Legislating the Situation of Persons Missing as a Result of Armed Conflict or Internal Violence: Measures to prevent persons from going missing and to protect the rights and interests of the missing and their families, p. 7.

Sophie Martin, then head of the Missing Persons Project at ICRC headquarters, defined a missing person as “persons whose families are without news of them as a result of armed conflict or internal violence.”⁶¹ She does seem to implicitly include other categories, and mentions disappearances in the rest of the article. Regardless, her very narrow definition, it could exclude disappearances and specifically exclude a range of other people who go missing for other non-violent reasons.

The Human Rights Council Advisory Committee has found that missing person are “those whose families are without news of them, as well as those who are reported, on the basis of reliable information, as unaccounted for as a result of an international or non-international armed conflict.”⁶² This definition seemingly encompasses two categories – firstly, anyone that a family has no news of and secondly, those that are unaccounted for as a result of armed conflict. Obviously, those unaccounted because of conflict would also be amongst those whose family have no news about them, although there may be cases where there is no family or the absence has not been reported. Excluded from explicit delineation, but nonetheless included implicitly in their report were people who go missing because of natural disasters, internal violence and disturbances. However, the report of the Advisory Committee states that its “report does not cover cases when people go missing as a result of other situations, for example, natural disasters or internal violence or disturbances.” Thus, while their definition is wide enough to encompass these other categories, the Advisory Committee explicitly states that their report does not cover these categories but not that these categories are not included in the definition. This is a general problem, as while many accept a wider application of the term to encompass groups beyond those missing as a result of armed conflict and disappearances, the other groups are not seen to be in practice groups that are affected by the missing persons’ issue. The Advisory Committee in another report in its first conclusion to the report notes that: “International obligations to prevent and resolve situations of missing persons in connection with armed conflict are based both on international humanitarian law and international human rights law” (emphasis added).⁶³ Thus, the Advisory Committee accepts that there are missing people other than those who went missing as a result of armed conflict.

It is crucial to incorporate all groups that are affected by the missing persons issue into the definition of the missing and deal with them as well. All groups that are affected need to be dealt with on a systematic basis. The main purpose for this is to have a mechanism(s) and process(es) to find people. At the moment the limited definition of “missing” excludes a variety of people who go missing and therefore these other category of persons who cannot be found are not formally dealt with at the

⁶¹ S. Martin, “The missing”, 84 *International Review of the Red Cross* (2002), p. 723, 724.

⁶² Human Rights Council, Sixteenth session Report by the Human Rights Council Advisory Committee on best practices in the matter of missing persons, UN A/HRC/16/70, 21 February 2011.

⁶³ Human Rights Council, Progress Report of the Human Rights Council Advisory Committee on best practices on the issue of missing persons, A/HRC/14/42, 22 March 2010, para. 98.

international level systematically. This is changing to some degree as a result of events especially over the last few years particularly migrants who have been lost in the Mediterranean on their way to Europe. However, many migrants, and others go missing every year in a variety of setting and for a variety of reasons. While a person who goes missing as a consequence of a natural disaster or migration should not be dealt with legally the same as those who go missing as a result of a disappearance there ought to be ways and means to try and find people regardless of why they cannot be found. The legal framework currently existing and applicable to victims of enforced disappearance (i.e. the disappeared person and all persons who suffer a direct harm as a consequence of the disappearance, thus including families) should not be applicable to persons gone missing as a result of natural disasters, or other events but the term missing would be usefully applied to all missing people to allow families and others to have ways to search and find their loved ones.

At present, generally speaking, in international law, the missing persons issue is one contained almost exclusively in humanitarian law. There is international human rights law that effects all groups that missing people come from, on issues such as the right to the truth, the right to justice, the right to reparations, and the duty of the state to investigate. However, these issues are not specific to the missing, certainly not applicable to all people who cannot be found, and the relevant laws do not in fact specifically mention the missing. The missing are not often mentioned, not even in the narrow definition that applies to people who went missing as a result of armed conflict. Further, these laws are not seemingly applied in practice to the missing and, when they are they are not applied to all people who are missing. This can be seen in the example, when the UN General Assembly adopted resolution 61/155 in 2007 on Missing Persons. The Resolution is titled “Missing Persons” without limiting it to only those missing because of armed conflict. In other words the title of the Resolution seemingly indicates that the document deals with missing persons in general, or the totality of the problem. In reality, and clearly throughout the whole resolution, the substance of the resolution only deals with persons who have gone missing as a result of armed conflict.⁶⁴ There is no mention in the resolution of people going missing from other causes. There are no recommendations that deal with the missing in categories other than those that have gone missing as a result of armed conflict. It is interesting to note that in report of the United Nations Secretary General on the implementation of Resolution 61/155 it is noted that: “The problem of missing persons is particularly severe in the context of armed conflict” (emphasis added).⁶⁵ In other words, there is recognition that the missing is not only a subject relevant for armed conflict. The reality is that missing persons have a severe impact, regardless of the cause of the person going missing, especially if there are large numbers. If there is a

⁶⁴ UN General Assembly Res. 61/155, “Missing Persons”, A/63/299, 18 August 2008.

⁶⁵ UN General Assembly Report of the Secretary-General: Missing Persons, A/63/299, 18 August 2008.

major disaster and thousands go missing, or thousands of people are trafficked etc. the problem is severe. Critically, for the families the issue is that person is missing and the emphasis is to find him regardless of the cause. In the 2013 General Assembly Resolution on missing persons again mentioned the issue of the missing was deemed to be only an issue during armed conflict.⁶⁶

The Council of Europe has defined a missing person as “a natural person whose existence has become uncertain, because he or she has disappeared without trace and there are no signs that he or she is alive.”⁶⁷ Here there seems to be an acceptance of the idea that all the missing are covered, regardless of the category, except that this definition does not deal with missing persons who are no longer alive. This can be problematic. The definition should cover all missing people even if they are alive. The emphasis should be on dealing with all cases to provide clarity and assist the families to determine what happened to their loved ones. There should be no reason not to deal with such cases, as the cause of their going missing might be the reason that there is no indication that they are alive. This would cover cases of disappearances, abductions, trafficking and other similar issues.

Generally, missing people are dealt with as an international humanitarian law issue alone. International human rights law does not deal specifically with the missing. It does deal with the missing, as far as it deals with those who have disappeared, and to some extent the broader category of the missing as it deals with issues where rights have been violated that are not specific to missing people. So if there has been a human rights violation then the violation is covered in the laws. Not covered specifically within these laws are the issues about the people whose rights have been violated, but who are now missing. Thus, international human rights law deals with human rights violations, but not really the consequences of the violation, in other words dealing with the person that has gone missing as a consequence of the violation. Within the context of international human rights law the issue of the disappeared is dealt in number of instruments. However, not always dealt with sufficiently in international human rights law is searching for, recovering and identifying those who have disappeared. More often, those who have suffered the fate of an enforced disappearance are dealt with generally as the missing, and are generally called the missing. However, even these cases are not incorporated often in resolutions and actions dealing with the missing. In the 2013 General Assembly resolution on the missing, disappearances are not even mentioned, other than welcoming the coming into force of the International Convention on the Protection of All Persons from Enforced Disappearances.⁶⁸

Thus, the disappeared and other people who have gone missing as a result of violence, outside of the context of armed conflict are not incorporated into the

⁶⁶ UN General Assembly Res. 67/177, “Missing persons”, A/Res/67/177, 20 March 2013.

⁶⁷ Council of Europe, Principles concerning missing persons and the presumption of death Recommendation, CM/Rec (2009)12, and Explanatory Memorandum, p. 9.

⁶⁸ UN General Assembly Res. 67/177, “Missing persons”, A/Res/67/177, 20 March 2013.

category of the missing. In this context, the Advisory Committee in its very first conclusion to its Report notes that: “International obligations to prevent and resolve situations of missing persons as a result of an armed conflict are based on both international humanitarian law and international human rights law.”⁶⁹ Again the emphasis is on armed conflict. It excludes other categories such as those who have gone missing as result of other violence and human rights abuse, including enforced disappearances. However, disappearances occur at all times: in times of international armed conflict, internal armed conflict and times of peace. Enforced disappearances do occur during times of armed conflict, especially internal armed conflict, but they occur mostly during times of peace. At the present time, however, the way the missing persons issue is discussed excludes even the categorisation of the disappeared in the definition of the missing, even though they are dealt with by organisations working on the missing. A more inclusive definition of the missing ought to occur that includes all groups affected and especially those who have gone missing. At the present time the way the missing are defined only includes armed conflict and not those who have gone missing as a result of other types of violence as well as a range of other causes.

As far as the delineation and understanding of the terms “missing persons” versus “disappeared persons,” is concerned, the report of the Advisory Committee notes that the term missing persons “is different from and broader in scope than ‘enforced or involuntary disappearance.’” This is somewhat imprecise as disappearances are not different, but are part of the category of missing persons. Using the term missing seems to suggest that people simply cannot be found. Missing suggests that no crime has been committed. However, a disappearance is a crime. The term missing seems to suggest no intent, or action by anyone that led to a person going missing. It suggests that person simply cannot be found or that a person’s whereabouts are simply unknown. This is however different in times of conflict as a missing person may be a prisoner of war or is being held in detention or custody. In conflict circumstances, the term missing is specific to humanitarian law. Again the term missing is being used not to delineate a crime or specific action against an individual but rather that circumstances at the time do not allow the person’s whereabouts to be determined. However, there are situations where there is a specific intent by the perpetrators for people who have been disappeared, not to be found. This is specifically the case in the Western Balkans, where disappearances have occurred. The disappearances were perpetrated so that the people who are disappeared, and often killed, should not be found. It is thus true, as noted by the Advisory Committee, that the term missing is broader in scope than the term disappearances. Disappearances however fall within the wider definition of the missing. However, disappearances are just one group of those who are classified as missing. However, even the term disappearance is

⁶⁹ Ibid., p. 20.

ambiguous.⁷⁰ It does not differentiate between a willing or unwilling disappearance. There are different terms for a disappearance that does not occur voluntarily. An enforced, forced or involuntary disappearance⁷¹ is used to denote a disappearance that did not occur through the persons own volition, and usually⁷² when there has been an “arrest, detention, abduction or any other form of deprivation of liberty by the agents of the State or by persons ... acting with the authorization, support or acquiescence of the State” and the state’s “refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person”, thus placing the person subjected to the enforced disappearance “outside the protection of the law.”⁷³

Thus, an enforced, or forced, disappearance is a specific act carried out by the state, its agents, or those acting with the consent or acquiescence of the state.⁷⁴ It occurs where the state or its agents refuse to affirm the detention of an individual or refuse to divulge the place of detention. There does not need to be direct action by the state but if the state or its agents authorise, support or acquiesce to the disappearance then it is deemed to be state action. This does not always occur with other categories of people who go missing.

However, some use the term missing interchangeably with the term disappearance(s). Thus, for example when people refer to the missing in the Western Balkans, they are usually referring to people who were disappeared. However, as has been noted, “[i]n a typical case of enforced disappearance, an individual is abducted by unidentified State agents and is never heard of again. There is no arrest warrant, no judicial procedure and no transparency regarding the deprivation of liberty.”⁷⁵ Thus, what occurred during the war in the Former Yugoslavia should be more accurately described as enforced disappearances. In the broad sense the people went missing, but what happened to them were mainly crimes: that of enforced disappearances. These enforced disappearances were committed usually, as has been proved at the ICTY, on the direct orders of senior state officials.

State action of any type is however not necessary for the crime of enforced disappearance to be prosecuted at the International Criminal Court. There an

⁷⁰ See R. Brody, F. González, “Nunca Más: An Analysis of International Instruments on Disappearances”, 19(2) *Human Rights Quarterly* (1997), p. 365, 366.

⁷¹ On the terminology, see J. Méndez, J.M. Vivanco, “Disappearances and the Inter-American Court. Reflections on a Litigation Experience”, 13 *Hamline Law Review* (1990), p. 508, 510.

⁷² I use usually because the Rome Statute of the International Criminal Court recognises that political organisations can be responsible for an enforced disappearance. No state action of any type is necessary.

⁷³ International Convention for the Protection of All Persons from Enforced Disappearance, Part I. / Article 2. See M. Nowak, “Torture and Disappearance”, in C. Krause, M. Scheinin (eds.), *International Protection of Human Rights: A Textbook* (Turku, Abo Akademi University, 2009), p. 156.

⁷⁴ See Sarkin, *supra* n. 2.

⁷⁵ L. Ott, *Enforced Disappearance in International Law* (Antwerp, Intersentia, 2011), p. 1.

enforced disappearance can be committed by a political organisation. However the ICC only is able to prosecute disappearances where they occur within the context of crimes against humanity. For that to have occurred, the disappearances must be systemic or widespread. In *Kupreskic* the ICTY held that an enforced disappearance is a crime against humanity as long as it is “carried out in a systematic manner and on a large scale.”⁷⁶

The Rome Statute defines an enforced disappearance in a much wider way than other definitions do. It defines enforced disappearance to mean “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”⁷⁷ Thus, even a political organisation can be responsible for a disappearance without any role of a state or state agent.

Enforced disappearances have however been included as parts of other crimes. In other words a specific statute does not mention specifically an enforced disappearance that can be prosecuted before a court. Thus, enforced disappearances have been prosecuted not as enforced disappearances, but as for example “other inhumane acts,” as contained in Article 5(i) of the ICTY statute and Article 3(i) of the ICTR.

It is however significant that international humanitarian law does not use the term enforced disappearance, or maybe it is better to state that within the various treaties that are part of the composition of humanitarian law, the term is not found. As with other instruments, such as the ICCPR, enforced disappearance violates a range of rights, which are aspects of the crime but the term is not used in the instrument. Thus, courts or tribunals interpreting the ICCPR, or other instruments, including humanitarian ones, have read into them a prohibition against enforced disappearances, even though the term is not specifically articulated.

What does differentiate the missing versus the disappeared is the way they are dealt with and who deals with them. While there were few organisations that deal with the issues in the past⁷⁸ there are now more doing so.⁷⁹ They do, however, have different reasons and motivations for doing so. Some institutions have humanitarian, human rights, rule of law, or transitional justice motivations. Some have a combination of these reasons. Some organisations only focus on the disappeared. These include the

⁷⁶ ICC (Judgment) 14 January 2000, Case No. IT-95-16-A, Trial Chamber, *Prosecutor v. Kupreskic*, para. 566. See also ICC (Judgment) 2 November 2001, Case No. I-98-30/1-T, Trial Chamber, *Prosecutor v. Kvočka*, para. 208.

⁷⁷ Article 7(2)(i) Rome Statute of the International Criminal Court, 17 July 1998.

⁷⁸ A. Stoddard, “Humanitarian NGOs: Challenges and Trends”, in J. Macrae, A. Harmer (eds.), *Humanitarian Policy Group Report: Humanitarian Action and the ‘Global War on Terror’: A Review of Trends and Issues* (London, Overseas Development Institute, 2003).

⁷⁹ See O. Dubois, K. Marshall, S. Sparkes McNamara, “New technologies and new policies: the ICRC’s evolving approach to working with separated families”, 94(888) *International Review of the Red Cross* (2012), p. 1455.

United Nations Working Group on Enforced and Involuntary Disappearances (WGEID) and the United Nations Committee On Enforced Disappearances (CED). Some organisations focus mainly on the search for the missing. These would include the ICRC and the International Commission of Missing Persons (ICMP). Both organisations focus on the missing, in the wide sense of the word. Thus, they also search for the disappeared but in different ways.

The ICRC has a Central Tracing Agency that for many years has searched for combatants and for civilians reported missing as a result of armed conflict.⁸⁰ Where there has been a breakdown in communication for whatever reason, including the detention of the person concerned, the ICRC uses three processes to restore the links between families: Red Cross Messages, telephone calls,⁸¹ and the “Restoring family links” website.⁸² The new RFL website compiles country information as well as an emergency component which can be used in times of crisis.⁸³ While the work of the ICRC does not focus specifically on disappearances, they do provide forensic services. Implicitly though their work deals with cases of disappearance, because some of those who are missing, and are being sought, have suffered the fate of a disappearance.

More recently because the greater numbers of migrants going missing in Europe the National Societies of the Red Cross and the International Committee of the Red Cross have put in place specific processes to help families to locate migrants reported missing, as has the International Organization for Migration (IOM).⁸⁴

The work of the ICMP has also focused on the missing.⁸⁵ But in reality until relatively recently, it has been rather a focus on the disappeared. The original and specific work of the ICMP in the Western Balkans has meant that their work on the missing is, in fact, work on disappearances. The ICMP has extended their focus beyond the Western Balkans to other countries as well as to other missing persons categories including being involved in disasters and other catastrophes. They are also seeking to expand their interest to issues relating to migrants, human trafficking and other cases where people go missing.

Critically, the argument is not that all missing people ought to be incorporated in the same way into international human rights law and international humanitarian

⁸⁰ Ibid. On the tracing agency and restoring family links process, see <<http://familylinks.icrc.org>>. See also Restoring Family Links Strategy (Geneva, ICRC, 2009), <www.icrc.org/eng/assets/files/other/icrc_002_0967.pdf>.

⁸¹ See <familylinks.icrc.org>.

⁸² In 2012, the ICRC provided more than 279,000 Red Cross messages, 50,000 of them between detainees and their families, facilitated 227,500 phone calls between families, registered over 3,500 unaccompanied/separated children, and reunited more than 2,300 children with their families. See <www.icrc.org/eng/what-we-do/restoring-family-links/index.jsp>.

⁸³ See Dubois, Marshall, Sparkes McNamara, *supra* n. 79, p. 1455, 1470.

⁸⁴ See <<http://familylinks.icrc.org/europe/en/Pages/Home.aspx>> and the IOM Missing Migrants Project, <<http://missingmigrants.iom.int>>.

⁸⁵ K. Juhl, “The Problem of Ethnic Politics and Trust: The Missing Persons Institute of Bosnia-Herzegovina”, 4(2) *Genocide Studies and Prevention* (2009), p. 239.

law in the same way, but that all missing people ought to be covered and that there ought to be convergence on these issues in these international law regimes. All persons need to be covered, but not necessarily in the same way. The regime dealing with enforced disappearances also ought to be an international humanitarian issue, not a human rights concern alone, as discussed above, and applicable for example to what occurred in the Balkans in the 1990s. The missing in human rights law also ought to be covered so as to ensure that their relatives have rights to truth, justice, reparations, etc. It does mean that each category ought to be dealt with in the same way or have the same type of rights. The right to truth for those who disappeared could not be the same of those who disappeared as a result of a natural disaster for practical reasons. Thus, the families of those missing because of a disaster cannot expect the same right to truth as the families of those who disappeared.

4. THE NEED TO RECOGNISE AND RESEARCH THE GLOBAL SCALE OF MISSING PERSONS

The sheer magnitude and effect that missing people can have upon a society, particularly, but not limited to the context of conflict or human rights abuse, are the very reason that it is so important that the issue be dealt with comprehensively, systematically within the international and local sphere. It can be dealt with, and must be dealt with locally as well, but these issues are international issues, because many people go missing across national borders and many go missing in countries other than their own. Where there are substantial numbers of missing persons, peace and reduced violence is less likely. This was noted by the General Assembly in resolution 63/83 on Missing Persons in 2009. The GA noted that:

“the issue of persons reported missing in connection with international or non-international armed conflicts, in particular those who are victims of serious violations of international humanitarian law and human rights law, continues to have a negative impact on efforts to put an end to those conflicts and causes suffering to the families of missing persons, and stressing in this regard the need to address the issue from a humanitarian perspective, among others.”⁸⁶

The issue of the missing needs to be dealt with because of the significant impact those, who go missing, have on people directly connected to the missing person. Many people are also indirectly affected by this situation.⁸⁷ There are many others who are

⁸⁶ UN General Assembly, Res. 63/183, “Missing persons”, A/Res/63/183, 11 December 2008.

⁸⁷ See, for example, A. Busuttil, W. Busuttil, “Psychological effects on families subjected to enforced and prolonged separations generated under life threatening situations”, 16(3) *Sexual and Relationship Therapy* (2001), p. 206–228.

affected in some way, including those who have a role to play in trying to find the missing persons.⁸⁸ As a result the society suffers as a whole. These impacts apply to recent as well as older incidents. Families continue to seek those who may have gone missing decades before. An example of where time has not reduced the need to find out what happened to those who disappeared is Spain,⁸⁹ where people still search for their relatives and want answers about what happened to them in the 1930s, when more than 114,000 people disappeared.⁹⁰

Despite the numbers of missing being vast, it is clear that much information is unknown. While large numbers of people voluntarily go missing,⁹¹ many do so involuntarily. The reasons for “voluntarily” going missing are exceedingly complex.⁹² Many of these people’s cases are not reported, because at times people are believed to have disappeared of their own volition.

It is often very difficult to determine what happened to those who do go missing. There is difficulty ascertaining the extent of the problem of the missing due to a lack of accurate data.⁹³ While the magnitude of the problem is known generally, the specifics and details are not known. Accurate numbers of those who go missing are unknown for a variety of reasons, including the fact that not everyone missing is reported as such. Casualty and missing data reporting statistics are not accurate. It is extremely difficult to collect the data, as not all the numbers are recorded systematically, and not all the statistics are collected by the organisations that collect the data. Additionally, there are not many organisations that collect data concerning the missing.⁹⁴ If they do it is often restricted to a specific category of the missing or

⁸⁸ On the need for policing to respond to these issues, see G. Newiss, “A study of the characteristics of outstanding missing persons: implications for the development of police risk assessment”, 15(2) *Policing and Society* (2005), p. 212–225. See also R. Tarling, J. Burrows, “The Nature and Outcome of Going Missing: The Challenge of Developing Effective Risk Assessment Procedures”, 6(1) *International Journal of Police Science and Management* (2004), p. 16–26.

⁸⁹ G. Blakeley, “Digging up Spain’s past: consequences of truth and reconciliation”, 12(1) *Democratization* (2005), p. 44–59; M. Elkin, “Opening Franco’s Graves”, 59(5) *Archaeology* (2006), p. 38–43.

⁹⁰ F. Ferrandiz, “The Return of Civil War Ghosts: The Ethnography of Exhumations in Contemporary Spain”, 22(3) *Anthropology Today* (2006), p. 7–12.

⁹¹ See, for example, M. Henderson, P. Henderson, *Missing People: Issues for the Australian Community* (Canberra, Commonwealth of Australia 1998).

⁹² Fyfe, Stevenson, Woolnough, *supra* n. 52.

⁹³ This was already noted in 1988. See D. Hirschel, “Who is Missing? The Realities of the Missing Persons Problem”, 16(1) *Journal of Criminal Justice* (1988), p. 35–45.

⁹⁴ Action on Armed Violence “Counting the Cost: Casualty Recording Practices and Realities Around the World”, Action on Armed Violence (2014), <<http://aoav.org.uk/2014/counting-the-cost>>, p. 10. See also E. Minor, *Towards the Recording of Every Casualty. Analysis and policy recommendations from a study of 40 casualty recorders* (London, Oxford Research Group, 2012); and K. Krause, “Challenges to Counting and Classifying Victims of Violence in Conflict, Post-conflict and Non-conflict Settings”, in T.B. Seybolt, J.D. Aronson, B. Fischeff (eds.), *Counting Civilian Casualties. An introduction to Recording and Estimating Nonmilitary Deaths in Conflict* (New York, Oxford University Press, 2013).

confined to a country or region. Therefore, much more needs to be done to research and understand how vast and complex the problems are. There is therefore a need for a uniform process of reporting and data collection. This will allow for more accurate data to be collected across the world. In this regard there is a need for greater research.⁹⁵ Already, in a resolution adopted in 1974, the UN General Assembly noted that “one of the tragic results of armed conflicts is the lack of information on persons, civilians as well as combatants, who are missing or dead in armed conflict.”⁹⁶ It also considered that:

“The desire to know the fate of loved ones lost in armed conflicts is a basic human need which should be satisfied to the greatest extent possible, and that provision of information on those who are missing or who have died in armed conflicts should not be delayed merely because other issues remained pending.”⁹⁷

Some have argued that it is possible to have more reliable data than that which occurs at present.⁹⁸ It is imperative that processes to monitor and record accurate data occurs. If the data is unknown then there will an inability to prepare for and respond to crises when they occur. Accurate information will allow the relevant role players to deploy resources correctly and timeously that should lead to swifter and more favourable results in searching for missing persons.

Missing persons’ cases must be properly investigated⁹⁹ and law-based mechanisms and modern forensic methods should be employed.¹⁰⁰ This will ensure that justice can be done and those who have committed crimes can be held to account.¹⁰¹ Families of the missing must be encouraged, and they need to be permitted, to be actively engaged in the process.¹⁰² Reliable and accurate information must be provided to them. Their rights need to be safeguarded, including their right to privacy.¹⁰³

⁹⁵ See further L. McEvoy, L. McGregor, “Transitional Justice from Below: An agenda for Research, Policy and Praxis”, in K. McEvoy, L. McGregor (eds.), *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Oxford, Hart, 2008).

⁹⁶ See also C. Jones, “Human Rights: Rights of Relatives of Victims”, 25 *Harvard Law Journal* (1984), p. 470.

⁹⁷ UN General Assembly, Res. 3220 (XXIX), 6 November 1974.

⁹⁸ T. Spijkerboer, “Moving Migrants, States, and Rights. Human Rights and Border Deaths”, 7(2) *Law and Ethics of Human Rights* (2013), p. 213–242.

⁹⁹ N. Roht-Arriaza, “State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law”, *California Law Review* (1990/2), p. 455–456.

¹⁰⁰ J. Sarkin, “Foreword”, in N. Marquez-Grant, M. Groen, R. Janaway, *Forensic Archaeology: a Global Perspective* (Chichester, Wiley-Blackwell, 2015), xxxv-xli.

¹⁰¹ R. Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge, Polity, 2002).

¹⁰² S. Robins, *An Assessment of the needs of families of the missing in Nepal* (London, Post War Reconstruction Unit, University of York, 2009).

¹⁰³ J. Kim, S.H. Katsanis, “Brave New World of human-rights DNA collection”, 29(6) *Trends in Genetics* (June 2013), p. 329–332.

A rule-of-law approach needs to be applied. This entails working to a standard of evidence applicable to legal processes. This will facilitate the criminal prosecution of perpetrators.¹⁰⁴ At times the needs of victims and the need to hold perpetrators accountable can be at odds with each other.¹⁰⁵ A further complication could be processes involved in issuing death certificates or a presumption of death. These formalities would allow property and other civil processes to be effected, e.g. processes of inheritance and permission of spouses to remarry. These are very controversial and problematic issues for families, as relatives are loathe to accept the finality of a death. In Bosnia, the ICRC had a death certificate programme to provide for such documents.¹⁰⁶ This programme was eventually cancelled, because it was viewed by the families of the disappeared as a means to avoid finding the missing people.

Specific highly reliable methods are necessary to make accurate identifications. DNA testing is one method. It provides scientific accuracy and objectivity, and furnishes irrefutable evidence for courts. It has also been successful in assisting with the identification of persons missing from disasters and other events.

The international community must recognise the global scale of the problem of missing persons. The magnitude of this global problem must be properly researched and understood, including establishing accurate numbers of persons who go missing for whatever reason. It should be a global goal to improve the availability and quality of data on missing persons.¹⁰⁷ More research needs to be conducted to this end. Greater resources should be made available for this purpose. Information on missing persons globally ought to be made available annually. To this end an annual missing persons report should be produced. The WGEID compiles information sent to them on disappearances that is not complete because of underreporting. No one reports on the other categories, although the ICRC does some, and a range of other organisations such as IOM, ICMP and others do publish some data. The United Nations could be the agency that collects and disseminates the information by entering into partnerships with a range of institutions and groups. A new agency, or a UN committee or panel, could be established that is tasked with collating information concerning missing persons, but also to establish and coordinate an international missing persons

¹⁰⁴ See further A. Seibert-Fohr, *Prosecuting Serious Human Rights Violations* (Oxford, Oxford University Press, 2009).

¹⁰⁵ E. Stover, R. Shigekane, “The Missing in the Aftermath of War: When Do the Needs of Victims’ Families and International War Crimes Tribunals Clash?”, 84 *International Review of the Red Cross* (2002), p. 845.

¹⁰⁶ On the issues of death certificates and declarations of death, see G. Citroni, “The Pitfalls of Regulating the Legal Status of Disappeared Persons through Declaration of Death”, 12 *Journal of International Criminal Justice* (2014), p. 787–803.

¹⁰⁷ See generally on the values of information S. Cohen, *Denial and Acknowledgement: The Impact of Information about Human Rights Violations* (Jerusalem, Center for Human Rights, Hebrew University, 1995). See also A. Brysk, “The Politics of Measurement: The Contested Count of the Disappeared in Argentina”, in *Human Rights in Argentina: Protest, Change and Democratization* (Stanford, Stanford University Press, 1994).

database that has different categories. This institution could also ensure that a regular review of the developments on issues concerning the missing also occurs.

5. THE NEED TO ENHANCE THE LEGAL FRAMEWORK DEALING WITH THE MISSING

The architecture of the international legal system is not specifically geared to deal with the missing. It certainly is not geared to assist in the search for missing people. While there has been greater focus recently on the issues of migrants, trafficking and categories other than that of missing people, these groups also encompass missing people. However, the focus has not been on finding missing people or dealing with the issues connected to them. At the same time, there has also been, in recent decades, the rise in international criminal tribunals, truth commissions, and other bodies, on both the international level and within specific states, which focus on human rights abuses, including disappearances.¹⁰⁸ However, there has not been a sufficient focus on dealing with criminal issues that cause people to go missing other than enforced disappearances. Even for disappearances, even though there is law, few cases have been brought before these institutions.

Certainly, there is international law dealing with migrants, human trafficking and a range of interconnected issues, but the focus is not specifically on the missing, and not geared to try and find them particularly when they have crossed national borders. Setting processes in motion to search and find them is not really part of the legal framework. This ought to occur as many documented, as well as undocumented migrants, go missing each year. Obviously those who have been trafficked are missing, as their whereabouts are unknown. Without doubt in many states foreign national status as well as immigration standing are major bars and obstacles to dealing with problems that people in these categories face. As a result of their vulnerability they are more likely to be targeted and less likely to be assisted where this occurs. If they go missing the authorities in their own countries are less likely to be of assistance and the authorities in the country to which they have travelled are often likely to assume that they have gone elsewhere.

However, there is a greater body of law today which criminalises conduct which causes people to go missing (especially the International Convention for the Protection of All Persons from Enforced Disappearance on Enforced Disappearances),¹⁰⁹ there have been almost no prosecutions of these crimes at the international level. At times, disappearances have been part of a prosecution, even though not specifically identified as such. At state level there have been some prosecutions, but then only in

¹⁰⁸ See, however, Stover, Shigekane, *supra* n. 105, p. 845–866.

¹⁰⁹ GA Res 61/177, 20 December 2006, UN Doc A/Res/61/177 (2006), opened for signature on 6 February 2007, and entered into force on 23 December 2010.

relatively few states such as Argentina, Chile, Bosnia and Herzegovina and Guatemala. In most states where there have been disappearances almost no prosecutions have occurred.

The hybrid courts in places such as Cambodia, Sierra Leone, and Timor-Leste, while dealing with the accountability of individuals for serious international crimes, also have seen little focus on the disappeared. There has however, been a focus on disappearances in general by truth commissions,¹¹⁰ various UN bodies, regional commissions, and regional courts. This has been an important development as all of these institutions have critical roles to play.

Global initiatives are required to improve cooperation between states, including better information sharing and use of advanced communication and data processing mechanisms.¹¹¹

6. CONCLUSION AND RECOMMENDATIONS

Many people go missing every year in every country. However, many go missing when they cross national borders. While most countries have processes to deal with the missing, they are not really processes to trace missing people and many are not found. The missing, are less likely to be found when they have crossed national borders because often there is no idea that person is missing or because it is unclear in which state the person has gone missing. There is not much attention to actually finding people who have gone missing in general and specifically for cases caused by human rights violations including enforced disappearance, disasters, migration, human trafficking, organised crime, etc. For disappearances, there are reporting processes at the international level, but national reporting processes are not often systematised, integrated, coherent, or accessible to families or others.¹¹² This ensures that there is a lack of a methodology to search for people and for others to know what is known in regard to the search. The ability to interface with other processes and other systems could be very helpful in collating information domestically, between states and internationally. This is fundamentally important, as the numbers of people who have gone missing, and go missing each year, is massive. The details of the missing often are unknown and are not possible to quantify. Installing a system at the domestic and international levels to permit the registration of those missing would be most advantageous to the families of the missing and assist in the search for them.

¹¹⁰ R. Aldana, "A Victim-Centered Reflection on Truth Commissions and Prosecutions as a Response to Mass Atrocities", 5 *Journal of Human Rights* (2006), p. 107–112.

¹¹¹ This was noted in Organization of American States Resolution AG/Res. 2513 (XXXIX-O/09) of 2009 on Persons Who have Disappeared and Assistance to Members of their Families, para. 16.

¹¹² See further Sarkin, *supra* n. 2.

The effects of those who have gone missing, and especially those who have disappeared, cause some of the most traumatic and lasting consequences in a society. Addressing the issue of missing and disappeared persons, regardless of the circumstances under which they go missing, would contribute to peace and justice in the world.¹¹³ As Kathrynne Bomberger, Secretary-General of ICMP, has noted:

“Large numbers of missing persons are a powerful symbol of a failure to safeguard individual rights and to uphold the rule of law. They are a constant reminder of human vulnerability and exposure to tyranny. They contribute to maintaining the atmosphere of distrust that so often defines the fragility of governments in transition and they adversely affect the credibility of political, democratic and rule of law institutions. While seeking answers in each individual missing persons’ case is important, addressing the issue at the aggregate level of society, where it affects the credibility and prospects of political transitions, is of no less importance.”¹¹⁴

While the term missing is used in the quote above, the term used actually ought to be disappeared. The term missing is often used interchangeably with the term disappeared, and often used in circumstances where disappearances have occurred in situations of armed conflict. For this reason, there ought to be coherence between human rights and humanitarian law so that the term disappearance is always used, regardless of whether the disappearance occurred in times of war or peace.

As far as disappearances are concerned, large numbers of missing people undermine reconciliation processes.¹¹⁵ It is an obstacle to processes of democratisation.¹¹⁶ Transitional and other types of societies remain in limbo while the fate and whereabouts of missing and disappeared persons are unknown.¹¹⁷ Aside from inciting anger, the subsequent lack of closure for the families of missing persons results in legal confusion for income, property rights, and reparations.¹¹⁸ To provide effective guarantees, it is necessary to look beyond the traditional categorisations of the missing and to conceptualise the issue as part of human rights

¹¹³ See W. Lambourne, “Transitional Justice and Peacebuilding after Mass Violence”, 3(1) *International Journal of Transitional Justice* (2009), p. 28–48.

¹¹⁴ See <<http://uk.krg.org/genocide/pages/page.aspx?lngnr=12&smap=130000&pnr=38>>.

¹¹⁵ See generally R. Huang, C. Gunn, “Reconciliation as state-building in East Timor”, *Lusotopie* (2004), p. 19–38.

¹¹⁶ See further M.A. Brown, “Security, development and the nation-building agenda – East Timor”, 9(2) *Conflict, Security & Development* (2009), p. 141–164; N.A. Femenía, C.A. Gil, “Argentina’s Mothers of Plaza de Mayo: The Mourning Process from Junta to Democracy”, 13(1) *Feminist Studies* (1987), p. 9–18.

¹¹⁷ L. Holmes, *Living in Limbo: The Experiences of, and Impacts on, the Families of Missing People* (London, Missing People, 2008).

¹¹⁸ Crettol, La Rosa, *supra* n. 59, p. 356. See also A. Petrig, “The war dead and their gravesites”, 91(874) *International Review of the Red Cross* (2009), p. 351.

and human capital objectives, such as those set out in the Millennium Development Goals.¹¹⁹ Resolving all missing persons cases, and especially of those persons who have disappeared, is a means of curtailing cycles of violence and promoting economic development,¹²⁰ through non-repetition and prevention.¹²¹ The non-resolution of issues concerning the missing and especially the disappeared can exacerbate the fragility of peace in the places where they have occurred. It can undermine reconciliation processes and is a further obstacle to the development of a democratic society.¹²² It affects the advance of the rule of law and good governance.¹²³ Where there is no (or limited) justice, impunity is likely to be the result.¹²⁴ Thus, where crimes have occurred it is necessary to hold those responsible accountable for their actions.¹²⁵ However, finding out what happened to the missing and especially the disappeared may have a deterrent effect. Perpetrators may come to realise that the bodies they may want to hide are more likely to be detected in the future.¹²⁶ What

¹¹⁹ See A. Cornwall, C. Nyamu-Musembi, "Putting the 'Rights-Based Approach' to Development into Perspective", 25(8) *Third World Quarterly* (2004), p. 1415–1437.

¹²⁰ See L. Arbour, "Economic and Social Justice for Societies in Transition", 40 *NYU Journal of International Law and Politics* (2007), p. 1–27.

¹²¹ C. Fournet, "Mass Atrocity: Theories and Concepts of Accountability – On the Schizophrenia of Accountability", *Exploring the Boundaries of International Criminal Justice* (2013), p. 27.

¹²² E. Skaar, "Reconciliation in a Transitional Justice Perspective", 1(1) *Transitional Justice Review* (2012).

¹²³ See generally Brown, *supra* n. 116, p. 141–164.

¹²⁴ E. Stover, "Witnesses and the promise of justice in the Hague", in E. Stover, H.M. Weinstein (eds.), *My neighbour, my enemy* (Cambridge, Cambridge University Press, 2004).

¹²⁵ B. Finucane, "Enforced Disappearance as a Crime Under International Law: A Neglected Origin in the Laws of War", *Yale Journal of International Law* (2010), p. 171–195.

¹²⁶ Satellite imagery or earth observation satellite data has been crucial to detect mass graves. It can locate these sites by determining even a one millimetre change in ground topography. See London Institute of Space Policy and Law, *Evidence From Space. Study for the European Space Agency. On Use of Space-Derived Earth Observation Information as Evidence in Judicial and Administrative Proceedings. Series of Studies in Support of Actions to Integrate New Developments into Current EO Services* (London, 2012), p. 186. On these issues in Bosnia-Herzegovina and the detection of mass graves during the conflict see D. Rohde, "Evidence Indicates Bosnia Massacre", *Christian Science Monitor*, 18 August 1995. On Zimbabwe, see X., "Zimbabwe: satellite images show destruction of community", Amnesty International, 2 June 2006, <www.amnesty.org.au/news/comments/526>. On the use of global positioning systems (GPS), geographic information systems (GIS), Earth observation (EO) and remote sensing to deal with human rights issues, see J.A. van Wyk, "Space for peace? The use of space technology to monitor conflict trends and human security in Africa", 4 *Conflict Trends* (2008), p. 12–17. On the use of these images in court, see C. Arzt, "Use of Satellite Imagery in Legal Proceedings", 24(4/5) *Air & Space Law* (1999), p. 195. The issue of GPS tracking against a suspect accused of terrorism and murder was dealt with by the European Court of Human Rights in ECtHR (Judgment) 2 September 2010, Case No. 35623/05, *Uzun v. Germany*. The Court found no violation and particularly in the right to privacy in the use of this technology, as it found that the right is subject to limitations in the interests of national security, public safety, economic wellbeing of the country, or to prevent disorder or crime. On remote sensing, see the United Nations (UN) Resolution Relating to Remote Sensing of the Earth from Outer Space General Assembly Resolution 41/65, (unanimously) adopted 3 December 1986.

happened to victims and who perpetrated the deeds may be determined by the use of a variety of scientific techniques leading to the discovery of the perpetrator.

It is evident that families of the missing want to know,¹²⁷ need to know,¹²⁸ and have the right to know, in certain circumstances, the truth about what occurred to the person who went missing.¹²⁹ Not all families of the missing have the same rights. The families of those who have disappeared have a specific international legal regime that protects their rights in particular ways. The other categories of missing people do not have the same protections and same rights because of the differing circumstances of the person going missing and the practicalities involved. While women are especially hard hit by disappearances,¹³⁰ all people are hit by a person going missing. In some categories, all genders are affected equally, while in others one gender is more adversely affected than the other. Regardless, their needs ought to be taken into account across a large range of areas.

Providing effective redress to the problem of the missing must form part of overall efforts to reduce human vulnerability, improve political participation, access to justice and ensuring economic rights. Contemporary approaches are needed to respond to these challenges that take into account an evolving legal landscape, changed behavioural patterns, as well as the increasing impact of new technologies.

At present there is little attention and political will to deal with the issues concerning the missing in totality around the world. This is changing as a result of events in recent times, especially those concerning migration. Thus, today people go missing for a variety of reasons including violence outside of armed conflict. An enforced disappearance can occur during times of war or internal armed conflicts or during times of peace. Human rights law and humanitarian law are both applicable. Some however argue that missing persons only applies to those people who go missing during conflict.¹³¹ This is a very narrow interpretation of the term.

The term missing persons should be applicable to all situations that people go missing, including those who have been disappeared. However, the term missing should not be applied to those who have been disappeared. The families of all persons who cannot be found want their cases equally dealt with. The rights applicable to all categories of missing persons cannot be the same, but there should be a minimum set

¹²⁷ P. Boss, L. Beaulieu, E. Weiling, W. Turner, S. Lacruz, "Healing loss, ambiguity and trauma – a community-based intervention with families of union workers missing after the 9/11 attack in New York City", 29(4) *Journal of Marital and Family Therapy* (2003), p. 455–467.

¹²⁸ R. Arditti, *Searching for Life: The Grandmothers of the Plaza de Mayo and the Disappeared Children of Argentina* (Berkeley, University of California Press, 1999).

¹²⁹ P. Sant Cassia, *Bodies of Evidence: Burial, Memory and the Recovery of Missing Persons in Cyprus. New Directions in Anthropology. Vol. 20* (Oxford, Berghahn, 2005).

¹³⁰ I. Jeevasuthan Subramaniam, N.M. Majumder, Z.A. Hatta, B.F.M. Zakari, "Implications of Enforced Disappearances on Women-headed Families in the Northern Province", 4(4) *Sri Lanka International Journal of Humanities and Social Science* (2014), p. 236.

¹³¹ *Aim for Human Rights, Using Law Against Enforced Disappearances: Practical Guide for Relatives of Disappeared Persons and NGOs* (Utrecht, Aim for Human Rights, 2009), p. 9.

of standards that apply to all cases. All cases should be able to be registered in national as well as international databases, which should be accessible for purposes of finding the missing person. Much more needs to be done to put all issues concerning the missing on the international, regional, sub-regional and domestic agendas. Processes and mechanism need to be established to focus on the missing. There is a need for an international mechanism and standing capacity available that can provide a structured and sustainable response, including forensics,¹³² to all missing persons cases, whether from conflict, human rights abuses, organised violence, migration or other causes and to rich and poor countries alike. A permanent Disaster Victim Identification platform is needed to create a rapid deployment model which will provide proven, relevant expertise where it is needed, when its needed, and offer minimum target capacities for the throughput of samples, in particular for DNA. This will ensure improved and equitable access to resources that are at present more available in countries where there are increased resources. Funding ought to be allocated for these processes. Protocols need to be entered into by the relevant role-players, to develop cooperation strategies and the technical infrastructure needed for these purposes. A global forum on missing persons should be created which ensures that a worldwide standing cooperative network dealing with the missing exists. Round table meetings and other events could occur annually to ensure the voices of families and survivors, international and other organisations and the sciences are heard.

The roles and responsibility of governments in addressing missing persons cases following armed conflict need to be specifically defined in legal standards which then need to be applied by all states. There is also a need to define the legal responsibilities to do this as well as ensuring that the relevant standards and data protection to address missing persons are established. This would also allow scientific advances to be effectively harnessed to help in providing assistance in accounting for the missing. In this regard more needs to be done to collect and share information. There needs to be processes that are established to search for the missing in all parts of the world regardless of where or why they have gone missing. There needs to be the development of the capacities to link the data from all sources whether domestic or international to locate missing persons on an international level in a manner that protects the privacy of those who volunteer information to search for missing persons. Crucially, the issue of the missing needs to be dealt with comprehensively and systematically at all levels. Already, there is an international obligation of cooperation among States in cases of enforced disappearance.¹³³ The Committee on Enforced Disappearances (CED) has used those provisions to issue recommendations concerning precisely migrant persons reported missing.¹³⁴ The CED recommended Mexico set up, together with the

¹³² Sarkin, *supra* n. 100, p. xxxv-xli.

¹³³ Articles 14 and 15 of the International Convention on the Protection of All Persons from Enforced Disappearance.

¹³⁴ CED, Concluding Observations on Mexico, CED/C/MEX/CO/1, 13 February 2015, paras. 23–24.

neighbouring countries, a trans-national mechanism to search for migrants reported missing and to ensure that their families have access to justice. The Inter-American Commission on Human Rights and the Working Group on Enforced or Involuntary Disappearances (WGEID) have issued similar recommendations. Thus, many role-players could and should be engaged in the processes. Supporting and involving the families in these issues and respecting their rights and needs are critical.¹³⁵

¹³⁵ S. Robins, "Ambiguous Loss in a Non-Western Context: Families of the Disappeared in Postconflict Nepal", 59(3) *Family Relations* (2010), p. 253–268.