

Sarajevo, 14 June 2013  
165-031/2013

Dear Ms. Lavin,

Thank you for your request for information relating to the Human Rights Council Resolution 21/7, "Right to the Truth."

ICMP welcomes the adoption of this Resolution and its recognition of rights of victims of gross violations of human rights and applicable international humanitarian law, in particular of the right of families of victims to know the truth regarding such violations. To this end it is important for States to establish or maintain effective processes that inculcate not only the authorities but society at large.

ICMP is endeavors to secure the cooperation of governments and other authorities in locating and identifying persons missing as a consequence of armed conflicts, violations of human rights, disasters and other causes, and provides assistance to their efforts. ICMP hence maintains and contributes to processes aimed to ensure the full implementation of the right to know the truth.

***Domestic Legislation on Missing Persons***

States should ensure that domestic legislation holistically addresses the issue of missing persons and enforced disappearance. Such legislation does not necessary need to take the form of a *lex specialis*, but can be part of various separate legislative frameworks, such as welfare law, inheritance law, education law, and criminal law, including criminal procedure. Legislative provisions should not only reaffirm the right to know the truth, but also provide for benefits or where appropriate reparations, to establish or amend domestic rule of law institutions; create archives or databases; provide for the protection of personal data.

An example of *lex specialis*, that also served as a blueprint to the ICRC's model law on missing persons, is the Law on Missing Persons of Bosnia and Herzegovina that provides for the establishment of the central records on missing persons and calls for the establishment of a central institution to deal with the issue of missing persons. The drafting of the law was jointly advised by the ICRC and ICMP.

***Rule of Law Institutions***

It is important to build or strengthen domestic rule of law institutions that enable states to comply with human rights obligations on the missing persons issue in a non-discriminatory, transparent and accountable manner. The best examples are state-level bodies that allow the state to demonstrate its political willingness to take preventive action, or to lead processes of locating, recovering and identifying persons who have gone missing. It is of critical importance that such institutions cooperate with criminal judicial processes and perform their functions to the requirements of judicial proceedings. To this end, such institutions must work to standards of evidence admissible in a court of law. They should also play a key role in collecting, classifying and preserving documents and other evidence related to disappearances and missing persons for historical purposes and eventual closure.

Ms. Nekane Lavin  
Human Rights Officer, Transitional Justice  
Office of the High Commissioner for Human Rights  
CH-1211 Geneva 10  
SWITZERLAND

***Central Records and Databases***

Such records should be created to provide, inter alia, an accurate accounting of disappearances and missing persons, their numbers, all efforts to locate, recover and identify the missing. They should also record places of final burial. These records should be used by authorities to provide reliable and accurate information to victims and to citizens regarding the process and as the basis upon which to provide benefits or other relief. Optimally, these records should be housed within state-level institutions. In case of Bosnia and Herzegovina, for instance, the Missing Persons Institute performs those functions. In other countries, such as Libya and Iraq, the task falls to specialized ministries or as in Cyprus to a committee.

Please do not hesitate to contact me for any clarification or additional information you may require.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J Kurbasic', is positioned above the typed name.

Jasmina Kurbasic  
Legal Officer