



Mass Grave Protection, Investigation and Engagement

Call for input: The protection of dead persons and their human remains, including of victims of potentially unlawful killings.

Dear Dr Tidball-Binz,

We are delighted to submit comments to this call in relation to policies, laws and practices governing the dignified engagement with human remains. In the following we highlight the importance of non-discriminatory rights-compliant engagement with human remains through the [Bournemouth Protocol on Mass Grave Protection and Investigation](#).

International standards for a rights-informed response to human remains found in mass graves: The Bournemouth Protocol builds on the Minnesota Protocol which provides some benchmarks on investigative standards relating to potentially unlawful deaths, and is thus referenced extensively. Of particular note are the

1. non-discriminatory approach¹ advocated in relation to all victims;
2. need to unify, for the benefit of the dead and their surviving families, the various branches of international human rights law, international humanitarian law and international criminal law; and
3. foundational basis that States have an obligation to search and investigate occurrences of extrajudicial, summary or arbitrary execution.

Further, the Protocol (in its section on Investigation pages 9-11) dedicates much effort to the planning of the dignified excavation, recovery and examination of human remains to enable, where possible, the identification of human remains (section on Identification pages 12-13); or where not, dignified storage with a view to facilitating the return to families (section on Return of human remains page 14) at a later stage.

The Protocol also draws together core provisions in international law on commemoration activities:

The right to bury family members is generally covered through the protection of private and family life.² The manner of burying the dead can form an essential aspect of religious practice as protected under freedom of thought, conscience and religion provisions.³ In addition, the building of memorials to the deceased can form parts of guarantees of non-repetition efforts.⁴ The Orentlicher

¹ Protection and dignified engagement should apply without adverse distinction and regardless of political or other opinion, association with a national minority, sex, sexual orientation, gender identity, religion or belief, age, race, colour, language, ethnicity, caste, national or social origin, physical or mental disability, health status, property, birth, marital status, or any other ground recognised by international legal instruments.

² As expressed, for example, in *Sabanchiyeva and others v Russia*, Judgment, ECtHR Application No 38450/05 (6 June 2013)

³ *Johannische Kirche & Peters v Germany*, Decision, ECtHR Application No 41754/98 (10 July 2001).

⁴ For example, *'Las Dos Erres' Massacre v Guatemala*, Judgment on Preliminary Objections, Merits, Reparations and Costs, IACtHR Series C No 211 (24 November 2009), para 265 and *Pueblo Bello Massacre v. Colombia*, Judgment on Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No 140 (31 January 2006) para 278.





Mass Grave Protection, Investigation and Engagement

Principles require that States preserve the collective memory of events (Orentlicher Principles, Principle 3).⁵ CIHL [Study on Customary International Humanitarian Law] Rule 115 states that 'the dead must be disposed of in a respectful manner and their graves respected and properly maintained' (page 16).

Commemoration is not only important for families who have received mortal remains, but also for those who have not; it is also a means of preserving collective memory as an aspect of education and non-repetition. Since a multitude of different (political) claims may be at stake, an acknowledgement and record keeping of where human remains are found may also form a way of guarding against revisionist attempts or negating the existence of human remains.

Standard and policy significance: The Bournemouth Protocol is an innovative, legally sound, policy and practice instrument; it is the culmination of a multi-disciplinary research project involving expert practitioners and academics from judicial, investigative, prosecutorial, and forensic fields. It integrates branches of international law with practical considerations for those stakeholders that seek to protect, manage and, where possible, investigate mass grave sites. The protocol is recognised by the UN and ICC, commended by UN practitioners, NGOs and policy advisers, and is implemented in the programmes of the International Commission on Missing Persons. As such it functions also as a capacity building tool to facilitate and safeguard legally compliant, indiscriminate, dignified, scientifically sound, and societally appropriate handling of mass graves and the human remains they contain. It is available in 15 languages, including Ukrainian.

Yours sincerely,

 and 

Professor Melanie Klinkner and Dr Ellie Smith

Professor Melanie Klinkner and Dr Ellie Smith are researchers at Bournemouth University and authors of the international standard-setting [Bournemouth Protocol on Mass Grave Protection and Investigation](#). Since October 2023, together with a team of forensic and data experts, they have been working on [MaGPIE](#), a €2M project to develop a comprehensive human rights framework for the engagement with mass graves; part of that project forms the creation of a world-wide mass grave map.

⁵ Considerations for freedom of expression rights can arise in the context of such memorials or massacre sites as expressed in *Faber v Hungary*, Judgment, ECtHR Application No 40721/08 (24 July 2012) where the Court acknowledges 'that the display of a contextually ambiguous symbol at the specific site of mass murders may in certain circumstances express identification with the perpetrators of those crimes; it is for this reason that even otherwise protected expression is not equally permissible in all places and all times' (at para 58).