

The Right to the Truth as an Enabler for Missing Persons Efforts

Abstract

The right to the truth is oft mentioned in conjunction with missing persons cases and is recognised for its propensity to function as an enabling right, helping victims and families to claim their rights. Whilst families, survivors, communities, specialist agencies, NGOs and international organisations readily invoke the right to the truth, the terminology used in the context can be ambiguous, overlapping, mandate-driven or strategic. This contribution reflects on the applicable legal spheres, use of approaches and practices in the context of missing persons investigations and claims made towards the realisation of the right to the truth. The paper clarifies the legal landscape to underscore what is meant by the right to the truth and how it may function as the starting point for other rights' realisation in the context of missing persons. Further, it examines and dissects conceptualisations of missing persons and resolution efforts; and identifies what actions help realise the right to the truth and to what extent. This is by no means a trivial inquiry, for families of the missing rely on the assistance of the law and relevant agencies to further the realisation of their right to the truth.

KEYWORDS: right to the truth, missing persons, effective investigation, forensic, identification

1. Introduction

As an increasingly recognised concept in international law, the right to the truth places an investigative duty on states to fulfil the obligation to find the truth concerning the fate of a

28 disappeared or missing person. The 2019 Guiding Principles for the search for disappeared
29 persons stress that the starting point for such a search should be the assumption that the
30 disappeared person is still alive (UN Committee on Enforced Disappearances 2019:
31 Principle 1). Whilst therefore the investigation is concerned with uncovering an individual's
32 whereabouts, in case of death, the expectation then is that the disappeared's human
33 remains are identified and returned.

34 Context and reasons why people go missing differ, but the number of missing
35 persons cases are staggering, suggesting it is a pressing, and in places, growing global
36 problem as evidenced by the following: the International Committee of the Red Cross (ICRC)
37 reports on 79,000 missing person cases in Brazil and 23,000 missing as a result of conflict in
38 Nigeria (ICRC 2020a) and the International Commission on Missing Persons (ICMP) speaks
39 of efforts to account for 120,000 persons as part of Colombia's missing persons work (ICMP
40 2020). Ongoing conflicts in Yemen, Syria and elsewhere continue to result in tens of
41 thousands of missing persons (ICRC 2020b). Since the start of the Russian invasion in
42 Ukraine millions of people have been displaced (IOM 2022) with the missing persons
43 number increasing by the day (Gunter 2022).

44 Within the context of human rights violations or armed conflict, for many families
45 access to rights is the main stumbling point to solve the fate of missing persons. Over the
46 past decades, however, judicial institutions as well as law enforcement mechanisms are
47 increasingly seeking to address the issue. To achieve this, they rely on specialised and
48 developed forensic sciences to assist in the location, investigation and identification of
49 missing persons. This has resulted in a number of actors, NGOs and international
50 organisations working towards responding to missing persons cases. Consolidating such
51 existing practice, the 2019 Guiding Principles now recommended as best practice in relation
52 to enforced disappearance that:

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54 [t]he competent authorities should make use of appropriate forensic methods and
55 their professional experience and accumulated knowledge in searching for and

56 locating disappeared persons. They may also request the cooperation of persons
57 with specialist and technical knowledge, forensic experts and other scientists, and
58 civil society organizations to come up with the hypothesis for the disappearance,
59 design the comprehensive strategy and conduct search activities (UN Committee on
60 Enforced Disappearances 2019: Principle 8).

61

62 This contribution is concerned with the extent to which the right to the truth is leveraged, for
63 the benefit of the families, to solve missing persons cases. To that end, the paper examines
64 how core actors operate and how their efforts work towards the realisation of the right to the
65 truth. The paper will advance the following argument: Firstly, for the 'right to the truth' to be
66 victim-centred and attach meaningfully to the plight of missing persons, a broad definition of
67 missing persons is required; a definition that goes beyond persons going missing or
68 disappearing during armed conflict and extends to missing persons as a result of politically
69 motivated persecution, authoritarianism, state-internal violence and unrest, migration,
70 refugee flows, trafficking, organised crime, man-made and natural disasters.

71 Secondly, through an analysis of actors and the terminology employed, a tension is laid bare
72 as to what kind of 'truth' may be achieved. There is the immediate truth of knowing what
73 happened to an individual including crucially their identification and return; and the broader
74 utility of truth for the pursuit of justice which may include accountability efforts as well as
75 restorative/reparative aspects. Crucially investigations that unlock information on what has
76 happened function as a pre-cursor for justice efforts and are in that sense 'enabling'. Both
77 notions of truth (the immediate and the broader justice enabling) may be interdependent and
78 concurrent, but it is unhelpful, if in practice they are overly conflated.

79 In its analysis, the paper is structured as follows: It begins in section 2 with an
80 examination of the different law-spheres in which the right to the truth is increasingly referred
81 to, in order to concretise what the right means. In section 3 this contribution examines the
82 way in which the right can be effectively leveraged by critiquing the definitions and
83 approaches used in relation to missing persons efforts. The paper goes on in section 4 to

84 scrutinise the types of efforts concerned with addressing missing persons cases using the
85 terms ‘forensic’, ‘humanitarian’ and ‘identification’ before analysing, in section 5, how
86 particularly framed efforts work towards the realisation of the right to the truth. This requires
87 an analysis whether the claims made by the practices under constructed phrases such as
88 *forensic humanitarianism*, *humanitarian forensic action*, *forensic identification* and
89 *humanitarian identification* meet the right to the truth elements that families and societies as
90 well as the law demand. The paper concludes by urging for greater clarity in how such
91 efforts benefit survivors and families of the victims in their quest for truth about what
92 happened to their loved ones.

93 Principally, this contribution is rooted in doctrinal legal analysis whereby the respective
94 legal conceptualisations and definitions of the right to the truth and missing persons efforts
95 are extended and compared with practice thereby highlighting potential inconsistencies,
96 ‘implementation gaps and hurdles’ (Dudai 2019: 275). The paper does not rely on empirical
97 research but is informed by the author’s international, collaborative, multidisciplinary
98 research experience with practitioners (working on finding missing persons in mass graves
99 see Klinkner and Smith 2020 and 2021; 2021a). The aim of such scholarship is to facilitate
100 that international legal obligations effectively translate into practice.

101

102 **2. The legal spheres of the right to the truth**

103

104 The right to the truth has its origins in international humanitarian law (Art 32 and 33 of the
105 Additional Protocol I to the Geneva Conventions) but is, in its present form and expression,
106 linked to enforced disappearance where people went missing as part of widespread gross
107 human rights violations, extrajudicial killings, torture and inhuman treatment (e.g. Arthur
108 2009; Méndez and Bariffi 2011; Naftali 2016; Klinkner and Davis 2020). Realisation of the
109 right requires an investigation into the events and politico-social structures that led to such
110 human rights violations and the circumstances of an individual’s suffering. Such an

111 investigation entails involvement by the victims and authoritative communication of the
112 investigative results. An effective investigation is also necessary in order to fulfil the public
113 requirement of the right to the truth and ensure that the evidence is made public to assist a
114 society in coming to terms with its past and moving forward (*El-Masri v the former Yugoslav*
115 *Republic of Macedonia*, a case concerned with extraordinary renditions). This section is
116 structured into the four legal branches where the right to the truth has featured explicitly or
117 implicitly: international human rights law, international humanitarian law, international
118 criminal law and domestic law. Within each of these branches the emphasis will be on who
119 the right-holder and who the duty bearer are and what the constitutive elements of the right
120 to the truth are.

121

122 ***2.1 International human rights law***

123

124 The most authoritative and express codification of the right to the truth in international
125 human rights convention law can be found in Article 24(4) of the International Convention for
126 the Protection of All Persons from Enforced Disappearance (CED), which grants victims:

127 the right to know the truth regarding the circumstances of the enforced
128 disappearance, the progress and results of the investigation and the fate of
129 the disappeared person. Each State Party shall take appropriate measures in
130 this regard.

131 Notwithstanding its limited membership, the treaty reflects the development, over decades,
132 in international jurisprudence and of declarations in relation to enforced disappearance
133 (International Commission of Jurists 2016; UNGA 1993; Organization of American States
134 1994). Before this codification, the right to know what happened to one's relatives had been
135 well litigated in case-law of the Inter-American Court of Human Rights (IACtHR) and the
136 work of intergovernmental bodies (including the UN Working Group on Enforced or

137 Involuntary Disappearances (WGEID) and the Ad Hoc Working Group on Human Rights in
138 Chile) responded to the problem of enforced disappearances and the need of the families of
139 the missing to know the fate or whereabouts of relatives or loved ones. Consequently, the
140 right to the truth relating to enforced disappearances had been recognised by regional and
141 international bodies (*Velásquez Rodríguez v Honduras* 1988: para 181; Ferrer Mac-Gregor
142 2016).

143 So, who are the right holders? Over the past decades, the right to the truth has been
144 broadened into other areas of gross human rights violations including torture and
145 extrajudicial killings (Méndez and Bariffi 2011). Missing persons, fall within the ambit of this
146 right, for their missing-ness is often a direct result of human rights violations. In addition to
147 individuals being the right-bearer, society too may have the right to know what happened
148 and how the state may be connected or indeed involved in gross human rights violations.

149 The duty bearer is the State who is obliged to conduct an effective investigation
150 following human rights breaches. Research, however, is rightly highlighting the role non-
151 state actors play when persons go missing, be that as part of enforced disappearance
152 (Srovin Coralli 2021), torture (Le Moli 2021), migration (*Human Rights Council, 'Report of
153 the Working Group on Enforced or Involuntary Disappearances on enforced disappearances
154 in the context of migration', (28 July 2017) UN Doc A/HRC/36/39/Add.2.*) or trafficking
155 (UNODOC 2009). Arguments to extend the duty to non-state actors are therefore made and
156 highlight this as an additional important space international organisations and civil society
157 organisations fill as part of their human rights practice. Interestingly, though beyond the
158 scope of this contribution, under international criminal law the crime of enforced
159 disappearance is conceptualised as incorporating acquiescence of 'political organization'
160 (Rome Statute 1998: Article 8(1)(i)) thus offering support for the inclusion of non-state actors
161 as duty bearers.

162 In any event, when a breach of human rights occurs, the onus is on the state
163 authorities to conduct an effective investigation into the events surrounding the violation and
164 the individual circumstances. From case law, we know what that this entails: an investigation

165 into the events that surrounded human rights violation and the individual human rights abuse
166 (e.g. *Massacres of El Mozote and nearby Places v El Salvador*: para 297 and 298; a case
167 relating to successive massacres). The purpose and standards for such investigations were
168 summarised, for example, in *Ituango Massacres v Colombia* 2006 (para 298, the case
169 concerned the killing of unarmed civilians, robbing, causing panic and displacement by
170 members of law enforcement and paramilitary groups). Investigations must seek to (a)
171 identify the victim; (b) recover and preserve the probative material related to the death in
172 order to contribute to any possible criminal investigation into those responsible; (c) identify
173 possible witnesses and obtain witness-statements in relation to the investigation; (d)
174 determine the cause, method, place and time of death, including patterns or practices that
175 could have caused the death; and (e) distinguish between unlawful deaths and natural
176 death, accidental death or suicide.

177 These investigations usually require victim involvement and findings must be
178 reported (Méndez and Bariffi 2011; Klinkner and Davis 2020). In that sense, the right to the
179 truth is more than a state duty to investigate, since it also has a collective component
180 affecting a society (e.g. Panepinto 2017).

181

182 **2.2 International Humanitarian Law**

183

184 The root of the right to the truth however lies in international humanitarian law, in Articles 32
185 and 33 of the Additional Protocol I to the Geneva Conventions of 1949 (for a full exposition
186 of the genealogy of the right see chapter 2 ‘The emergence of the right to the truth’ in
187 Klinkner and Davis 2020). Whilst the Geneva Conventions provide for the recovery of the
188 dead during armed conflict ‘[a]s far as military considerations allow’ (Article 16(2)), and all
189 four Geneva Conventions require the examination of dead bodies, Article 32 of the
190 Additional Protocols speaks of ‘the right of families to know the fate of their relatives’ as a
191 general principle relating to the protection of victims of international armed conflict, placing

192 an obligation on parties to the armed conflict to search for missing persons. Whilst the
193 Additional Protocol turned a basic human need into the language of a right for families, what
194 the exact content of the obligation is, is perhaps less clear.

195 The provision imposes a duty on those responsible for the adherence to international
196 humanitarian law but it has been noted that there may not be an individual right for a family
197 representative to insist that a government or organisation takes a particular action (Pilloud et
198 al. 1987). Nonetheless, the ICRC study on customary international humanitarian law,
199 suggests the following rule now forms part of customary international humanitarian law for
200 both international and internal armed conflict: 'Each party to the conflict must take all
201 feasible measures to account for persons missing as a result of armed conflict and must
202 provide their family members with any information it has on their fate' (Henckerts and
203 Doswald-Beck 2005: 421). Significantly, this customary law places obligation on warring
204 fractions including non-state actors if part of an internal armed conflict.

205 According to the ICRC study and the 2006 UN Study on the Right to Truth, support
206 for this position can also be found in military manuals and national laws on the missing.
207 Under international humanitarian law, therefore, the duty exists to account for those who
208 have gone missing and to inform the respective family. In other words, the right-holder
209 remains the family of the victims. But it does not *expressis verbis* refer to identification of the
210 missing and in any event the obligations in relation to the right to know are obligations of
211 means (and therefore not absolute). In that sense therefore the content of the right might not
212 extend as far as envisioned under human rights law where identifications feature in
213 jurisprudence.

214 For completeness, it is also worth outlining the right to the truth in the international
215 criminal and domestic legal context:

216

217 ***2.3 International Criminal Law***

218

219 In international criminal law, there is no express codification of the right to the truth.
220 The crime of enforced disappearance is listed as part of crimes against humanity with the
221 Article 7(2)(i) provision of the Rome Statute (1998) stating that the refusal to acknowledge,
222 give information and conceal forms part of the crime:

223 (i) "Enforced disappearance of persons" means the arrest, detention or abduction of
224 persons by, or with the authorization, support or acquiescence of, a State or a
225 political organization, followed by a refusal to acknowledge that deprivation of
226 freedom or to give information on the fate or whereabouts of those persons, with the
227 intention of removing them from the protection of the law for a prolonged period of
228 time.

229

230 The Article 7 chapeau requires that the offense was 'committed as part of a widespread or
231 systematic attack directed against any civilian population, with knowledge of the attack.'

232 And the Elements of Crime (2011) elaborate on the refusal to acknowledge and
233 'concealment' also requires that the accused had the intent to remove the victim from the
234 law's protection. Arguably, an implicit right to the truth can be inferred since otherwise,
235 without the relevant information provision, the crime of enforced disappearance continues.

236 The right to the truth has, in fact, featured before the International Criminal Court
237 (ICC) most prominently in relation to victims and victim participation since, to some, '[t]he
238 primary, and perhaps most important, right of victims in the context of international criminal
239 proceedings is their right to the truth' (Mettraux 2010: 77; *Kenyatta* 2014). And before the
240 ICC, the right to the truth has been invoked to urge for an effective investigation (e.g.
241 *Situation in the Republic of Kenya* 2015; *Bemba* 2009; *Ruto and Sang* 2013) as well as
242 victim involvement in investigations (*Situation in Darfur* 2008); demand accurate charging
243 (*Kenyatta* 2012); argue against delays of proceedings (*Ntaganda* 2015); reiterate the
244 importance of victims to be heard (*Blé Goudé* 2015); request access to information (*Gbagbo*
245 2012) and proffered in relation to reparations (*Lubanga* 2012). But here we observe an
246 important different in terms of actors: International criminal prosecutions are conducted by a

247 prosecutor on behalf of the international community, cognisant of the victims of atrocity
248 crimes. While both the prosecution and judges are tasked with finding the truth, this does not
249 place an obligation to disclose the truth to states or individuals. The right-bearer and duty-
250 bearer constellation do not apply in the same way as under international human rights law
251 and international humanitarian law; and reference to the content of the right are made for
252 persuasion only.

253

254 **2.4 Domestic law**

255

256 The right to the truth has also found expression in domestic law and, as noted in the case of
257 *Heliodoro Portugal* (a case on forced disappearance), the IACtHR recognised that right to
258 the truth obligations can derive from domestic laws:

259 It is worth noting that the obligation to investigate arises not only from
260 provisions of the international legal conventions that are binding for the States
261 Parties, but also from the domestic laws that refer to the obligation to
262 investigate ex officio certain unlawful conducts and the provisions that allow
263 the victims or their next of kin to denounce or file complaints, in order to
264 participate procedurally in the criminal investigations undertaken to establish
265 the truth about the facts (2008: para 143).

266 References to the right to the truth and domestic legal interpretation of the right to the truth
267 can be found in Colombia, Peru, Argentina, Mexico and El Salvador (Ferrer Mac-Gregor
268 2016: fn 46) with the right linked to constitutional principles such as human dignity or the
269 democratic and social rule of law, indicating the right's importance in safeguarding, as well
270 as constituting, governmental activities (which, although not central to the argument here, is
271 important for the public aspect of the right to the truth, i.e. that to know what happened to,
272 and in, a society forms part of democratic processes essential to the functioning of a just

273 society). Arguments to cement the importance of the right to the truth more generally can be
274 found in the suggestion by the Colombian Constitutional Court that the right to the truth
275 forms part of *jus cogens* norms (Constitutional Court of Colombia 2011). Here we return to
276 the familiar pattern as outlined in international human rights law: the state is the primary
277 bearer of duty; families and society are the right-holders; with the content of the right
278 requiring an effective investigation to be divulged to individuals (i.e. families of the missing)
279 and society.

280

281 ***2.5 The constituent elements of the right to the truth***

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283 From the above the right to the truth can therefore be defined in a limited and a more
284 comprehensive, standard way (following the exposition in chapter 3 'Content of the right to
285 the truth' in Klinkner and Davis 2020): During armed conflict ~~a limited *lex specialis* version of~~
286 the right to the truth demands (a) an authoritative search including the recovery and
287 examination of the missing dead; and (b) information sharing of all relevant information
288 between the agencies involved and with the family. Such efforts, in the case of death, may
289 result in the return of human remains to their family or, where such a return is not available,
290 the law requires appropriate burial and maintenance of graves. This more limited view
291 pertains to the special law requirements applicable in times of war only. That said, due to
292 customary international rules, it extends to all parties to the conflict, including non-state
293 actors.

294 Within the broader human rights framework (which includes the domestic ~~sphere and~~
295 ~~international criminal law as far as crimes against humanity are concerned~~), the right to the
296 truth has elements to include: (a) an authoritative investigation, which ought to include an
297 element of victim involvement, resulting in an account or explanation for what happened; (b)
298 the investigation has to be effective and take into consideration the wider public implications
299 of the atrocities; and (c) these investigations have to be authoritatively and independently
300 reported. In the case of death, such an investigation should endeavour to identify the victim

301 through forensic means and return the human remains to the next of kin (*Mapiripán*
302 *Massacre v Colombia* 2005: paras 305-306 where military forces were involved in the
303 massacre of civilians). This conceptualisation of the right to the truth also points to the
304 possibility of justice in the form of accountability and/or reparations. There is the immediate
305 truth of knowing what happened to an individual including crucially their identification and
306 return; and the broader utility of truth for the pursuit of justice which may include
307 accountability efforts as well as restorative/reparative aspects. In addition, human rights
308 jurisprudence highlights the public and democratic value of knowing what happened for
309 society more generally.

310 For both conceptualisations of the right to the truth, the origin and rationale for it stems
311 from a core human need (to know what happened to a missing loved one) which then has
312 found expression through a right. In that sense the right to the truth, in both circumstances,
313 when building on the facts about the whereabouts and identity of a missing person, can be
314 seen as an enabling right: a right which unlocks the possibility for justice and accountability
315 mechanisms but also commemoration. Importantly, under both international humanitarian
316 law and international human rights law, the search and investigative duty placed on states is
317 subject to means and not an obligation of outcome. Systematic integration theory further
318 posits that both branches of the law should be read as complementing one another
319 (Todeschini 2015, relying on Article 31 of the Vienna Convention on the Law of Treaties) to
320 avoid gaps that may have adverse effects, particularly for the right to a remedy.

321

322 **3. Missing Persons**

323

324 Having canvassed the legal realm of and for the right to the truth and how it can function as
325 a precursor, through placing an investigative duty on the state, for the resolution of missing
326 persons cases, it is apt to reflect on missing persons conceptualisations to determine what
327 category of missing persons engage what type of legal framework. So, who are 'missing

328 persons' as proffered by key actors?

329

330 ***3.1 A narrow approach: The UN Security Council Resolution***

331 In recognition of a growing global challenge, as evidenced by the ongoing conflict in Syria or
332 disappearances in Nigeria (highlighted, for example, by the ICRC 2019) Council President
333 Kuwait led the way to a draft resolution relating to missing persons thereby building on an
334 existing legal framework (Clement 2019). The result is the 2019 UN Security Council
335 Resolution on Missing Persons 2474. It is the first such Security Council Resolution on the
336 subject and limits the understanding of missing persons to armed conflict and international
337 humanitarian law only. It is silent on international human rights law, though the 2474
338 Resolution does 'recall' the 2018 UN General Assembly Resolution, which, in turn, makes
339 reference to human rights law provisions; though only cautiously and retaining, for the most
340 part, a clear link to the 'missing in connection with armed conflict' (used 16 times in the five-
341 page document).

342 With this narrow conceptualisation of missing persons as a result of, or in connection
343 with, an armed conflict only, the applicable legal realm is international humanitarian law with
344 the possibility, if sufficiently grave violations thereof have occurred, for prosecutions under
345 international criminal law (not for enforced disappearance but perhaps unlawful confinement,
346 targeting of civilians etc.) and, of course, corresponding domestic law for violations of
347 international humanitarian law more generally. Resolution 2474 only refers to human rights
348 law in relation to states as a general provision under international law and once specifically
349 in relation to the processes, i.e. search, recovery, maintenance of burial sites, respect for the
350 dead and repatriation of missing persons to their family members. But the fact remains, the
351 search and recovery of the dead has to be as a result of armed conflict and the importance
352 of families to know the fate and whereabouts of the missing is applicable with international
353 humanitarian law.

354 UN Security Council Resolution 2474 identifies as a primary agency the International
355 Committee of the Red Cross (ICRC) for addressing the issue of missing persons *in line* with
356 international humanitarian law. It thereby expresses a strong support for the ICRC whilst
357 also '*appreciating* the work of the national, regional and international organizations and
358 mechanisms in the field' (at 2).

359

360 **3.2 A broader approach**

361

362 The Interparliamentary Union and the ICRC (2009) operate with the following
363 conceptualisation:

364

365 By missing persons, we generally mean individuals of whom their families have no
366 news and/or who, on the basis of reliable information, have been reported missing as
367 a result of an armed conflict – international or non-international – or of internal
368 violence, internal disturbances or any other situation that might require action by a
369 neutral and independent body (at 9).

370

371 In a 2017 ICRC publication the definition outlined includes those going missing as a result of
372 disasters and in the context of migration (no author 2017: 536; Londoño and Ortiz 2017). It
373 references the International Convention for the Protection of all Persons from Enforced
374 Disappearance, which forms part of human rights instruments (and is therefore not an
375 international humanitarian law instrument). The ICRC, therefore, submits a missing persons
376 definition that goes beyond the definition of enforced disappearance in the convention to
377 ensure 'that the families' needs, including their right to know the fate and whereabouts of
378 their loved ones, are addressed' (at 537). This is significant. By adding to the situation in
379 which people may go missing those of violence outside armed conflict, post-conflict settings
380 and disaster, the missing persons category is applicable in peace-time. In other words, the

381 ICRC is actively proffering a missing persons definition beyond an international humanitarian
382 law mandate

383

384 Established in 1863, the ICRC operates worldwide, helping people affected by
385 conflict and armed violence and promoting the laws that protect victims of war. An
386 independent and neutral organization, its mandate stems essentially from the
387 Geneva Conventions of 1949. [...] It takes action in response to emergencies and
388 promotes respect for international humanitarian law and its implementation in
389 national law (ICRC no date: webpage).

390

391 And the ICRC has taken steps to address what they understand to be a larger than conflict
392 related issue: 'Given the expansion of ICRC activities on the issue of the missing and the
393 need to ensure a more uniform and coordinated approach on this matter globally, in 2002
394 the ICRC launched a process aimed at addressing the plight of missing persons and their
395 families' (Londoño and Ortiz 2017: 552). The 2020 publication entitled *Accompanying the
396 Families of Missing Persons: A Practical Handbook* professes in its foreword an inclusive
397 approach to all forms of enforced disappearance and missing persons cases as it

398 aims to serve all those having to endure the anguish caused by the disappearance of
399 a loved one. The courage, persistence and dignity of these families, as they struggle
400 to ascertain the fate of their loved ones and ease their own suffering, commands our
401 admiration and respect (ICRC 2020c: 7).

402

403 In the next section this will be discussed more closely under the heading 'humanitarian'.

404 The other international organisation concerned with missing persons is the
405 International Commission on Missing Persons whose mandate seeks to

406

407 secure the co-operation of governments and other authorities in locating and
408 identifying persons missing as a result of conflicts, human rights abuses, disasters,
409 organized violence and other causes and to assist them in doing so. ICMP also
410 supports the work of other organizations in their efforts, encourages public
411 involvement in its activities and contributes to the development of appropriate
412 expressions of commemoration and tribute to the missing (ICMP 2020a: webpage).

413

414 Their definition of Missing Persons too goes beyond the missing as a result of armed conflict
415 and includes situation of human rights abuses, migration, natural and man-made disasters,
416 organised crime and trafficking (ICMP 2020b).

417 The difference between the narrow and the broad approach is clear: Whilst the UN
418 Security Council Resolution is confined to the situation of armed conflict, those advanced by
419 ICRC and ICMP are rooted in international and domestic laws: those governing migration¹,
420 human rights abuses but also disaster response. This is where a third actor comes to the
421 fore: INTERPOL not only has a searchable public database for missing persons, it has also
422 has a well-established Disaster Victim Identification approach and developed a mechanism
423 for identifying missing persons globally through family DNA matching, called I-Familia
424 (INTERPOL 2021). Like the ICRC and ICMP, INTERPOL is an international organization
425 tasked, primarily with combating international crimes. Their contribution to missing persons
426 too is to assist families by facilitating, where possible, identifications of unsolved missing
427 persons cases (ibid).

428 This more inclusive understanding of missing persons chimes with the right to the
429 truth as outlined above in the comprehensive standard conceptualisation. With the ICRC
430 stressing the ‘families’ need to know the fate and whereabouts of the missing relatives’
431 (Londoño and Ortiz 2017: 564) it clearly acknowledges the right to know in its importance

¹ Notably the recognition of disappearances in the context of migration (UN Human Rights Council 2017).

432 and applicability to missing persons beyond the scope of international humanitarian law. For
433 gross human rights abuses of torture, extrajudicial killings and enforced disappearance, as
434 discussed above, the right to the truth would apply and notably could then also attach to
435 migration (where enforced disappearance, unlawful detention etc occur) as well as
436 trafficking. In addition, in the context of disasters, INTERPOL is suggesting that '[v]ictims
437 have a right to identity after their death' expressing a not so dissimilar right that attaches to
438 the dead bodies following disaster (INTERPOL 2018: 3). This relationship between the right
439 to the truth and the right to identification will be examined in more depth below.

440 For the moment, the above serves to amplify our understanding of missing persons,
441 which may be a source of confusion and potential division for the families of the missing:
442 they are most likely to care about the way the fate of their loved one can be solved (not what
443 branch of international law may apply). But with the issue of missing persons (broadly or
444 narrowly considered) getting increasing recognition, it is worth examining the corresponding
445 rise in activities by way of searching, locating and identifying missing persons.

446

447

448 **4. Missing Persons identification efforts**

449

450 The 2019 UN Security Council Resolution recognises the importance of scientific and
451 technological progress in the search for and identification of missing persons and
452 encourages states to 'to advance forensic scientific and methodological efforts for the
453 recovery, identification and management of bodies or human remains in a way that respects
454 human dignity' (UNSC 2019: 2 and 4). And, as stated above, this is also echoed in the 2019
455 Guidelines, on forensic expertise as an element of accepted general, professional practice.

456 In the following, the paper seeks to untangle the web of meaning of: forensic,
457 humanitarian, identification and permutations thereof. This is important, for states are
458 encouraged to engage with specialist organisations, the relevant science and methods
459 employed. At the same time, families actively seek and engage in such processes to

460 advance their legitimate interests and rights. Furthermore, families of the missing are known
461 to be involved in such efforts (e.g. Moon 2020; Schwartz-Marin and Cruz-Santiago 2016).
462 Correspondingly they have an interest in understanding the processes and practices they
463 engage with and most crucially to what extent the mechanisms will be able to realise their
464 right to the truth.

465

466 **4.1 Forensic**

467

468 The Encyclopedia of Criminology and Criminal Justice in its entries on ‘Forensic Evidence’
469 or ‘Forensic Science’, describes forensic science at its most basic level as the application of
470 science to law (2013: online entry; Moon 2016: 2). Forensic (true to its literal meaning ‘in
471 open court’ or ‘public’) implies the scientific, legal and societal realm by bringing matters to
472 and before courts of law or a judicial mechanism, a coroner, for example. Forensic is
473 commonly understood as denoting the application of scientific methods and techniques to
474 the investigation of crime (Cambridge Dictionary online; Tidball-Binz and Cordner 2022).

475 If we add the word ‘science’ or ‘evidence’ to forensic, then we are not merely
476 referring to scientific evidence obtained through testing or other scientific method; forensic
477 science is designed to retrieve and analyse evidence for the purpose of official, judicial
478 scrutiny by employing scientific methods. The use of that evidence in a court system will
479 mean that it is tested as to its validity and probative value, and usually has to meet certain
480 admissibility criteria. The use of forensic science would therefore seemingly denote an
481 officially recognised standard of evidence collection (Lassee 2017).

482

483 **4.2. Humanitarian**

484

485 As an adjective, the word humanitarian is concerned with improving human welfare and, in
486 particular within the context of gross human rights violations, reducing suffering. The United

487 Nations, international organisations and governments give humanitarian aid, assist with a
488 humanitarian disaster or seek to avert a humanitarian crisis.

489 But the adjective also features heavily in international law as indicating a nexus to
490 war: international humanitarian law, denotes a *lex specialis* as applicable during armed
491 conflict. And therefore, humanitarian intervention s often associated with the use of force
492 (Prime Minister’s Office 2018).

493 Therefore, the word humanitarian may signify ‘just’ an alleviation of suffering in a
494 context where ‘ordinary’ international human rights law applies; or humanitarian relief can be
495 given during an armed conflict where, due to the armed conflict, international humanitarian
496 law applies; or it may signify the alleviation of suffering through armed force (governed by
497 the *jus ad bellum* and *jus in bello*). In all three scenarios the objective is ‘relief’ for human
498 suffering. In the context of missing persons, humanitarian may be understood to bring
499 answers on the whereabouts of missing persons to the families with the aim to facilitate their
500 return (Swisspeace 2022).

501

502 **4.3. Identification**

503

504 The Minnesota Protocol (2016) defines human identification as ‘the allocation of the
505 correct name/identity to human remains’ (at 21). In the case of an unlawful death,
506 identification through visual recognition should be corroborated by other methods, including
507 DNA, dental records and fingerprint-analysis. This is all the more critical where
508 decomposition over time or alteration due to external factors adversely impacts visual
509 identification accuracy. A positive identification of human remains requires the consistency
510 between ante-mortem and post-mortem data (which may include DNA) and there are no
511 discrepancies that cannot be explained (at 24). Importantly, an identification is officially
512 certified by an appropriate authority tasked with issuing a death certificate.

513 Jurisprudence from the Inter-American Court of Human Rights is explicit in the

514 *Mapiripán Massacre* that the identification of missing persons following, for example a
515 massacre, constitutes a form of reparation placing an obligation on the state to positively
516 identify the victims: ‘When mortal remains are found and identified, the State must deliver
517 them as soon as possible to their next of kin, once filiation has been genetically proven, for
518 them to be honored in accordance with their respective beliefs’ (para 310). This same stance
519 was re-iterated a year later in another case involving a massacre in Colombia:

520 When the mortal remains are found and identified, the State must return them to their
521 next of kin as soon as possible, after having proved the relationship genetically, so
522 that they can be honored according to their respective creeds. The State must also
523 cover the burial expenses, in agreement with the next of kin (*Pueblo Bello Massacre v*
524 *Colombia* 2016: para 273).

525 It is worth noting, however, that missing persons may not be found nor is it always possible
526 to ascertain a positive identification from human remains. Indeed, concerns have been
527 expressed that placing too much emphasis on identification may ‘fail[s] the vast majority of
528 families and may even intensify their pain’ (UNGA 2020: para 35) causing additional
529 distress, disappointment and trauma. In such instances preservations and longer-term
530 storage measures are needed to safeguard the prospect of future identification. Or, where
531 such preservation and storage measures are unavailable, unidentified human remains may
532 be buried in marked graves according to the cultural or appropriate religious customs of the
533 deceased.

534 The importance of declarations of death where the death of a disappeared person
535 cannot be ascertained with certainty was recognised in the 1950 Convention on the
536 declaration of death of missing persons with the preamble acknowledging, the ‘difficulties of
537 a legal nature which have placed a great number of human beings in a precarious position’
538 adding that the solution to these challenges ‘calls for measures of international cooperation.’
539 Present day parallels can be found where in the absence of a death certificate a ‘Declaration
540 of Absence’ may be made as, for example, permitted under present day Colombian Law

541 (2012: Article 7).

542 Under international law the legal status of the missing person and their relatives is
543 not regulated. The International Convention for the Protection of All Persons from Enforced
544 Disappearance provides:

545 Without prejudice to the obligation to continue the investigation until the fate of the
546 disappeared person has been clarified, each State Party shall take the appropriate
547 steps with regard to the legal situation of disappeared persons whose fate has not
548 been clarified and that of their relatives, in fields such as social welfare, financial
549 matters, family law and property rights (Article 24(6)).

550

551 In contrast to this, in the context of disasters and mass fatalities, Interpol's DVI guidelines,
552 suggest the following:

553

554 Victims have a right to identity after their death.

555 All victims are treated equally in the identification process - there is no discrimination
556 on any basis whatsoever.

557 The victims are identified on the basis of the set standards.

558 A single error can seriously damage the integrity of the entire process and any future
559 processes (2018: 3).

560

561 This seeming 'right to identification', at least in the jurisprudence of the Inter-American Court
562 of Human Rights has been interpreted as part of the right to the truth (*Mapiripán Massacre*
563 2005), though there remains the proviso of it being an obligation of means. However, this
564 does not suggest that the right to the truth can be equated to a right of identification; in the
565 jurisprudence, the logical consequence of an effective forensic investigation should result in
566 an identification, paving the way for the return of human remains. The identification effort
567 forms part of the wider investigative obligations into the events that led to the missing

568 persons cases and is a form of reparation for the families when the fate of their loved ones is
569 revealed.

570

571 **5. Constructed phrases and their role in working towards the right to the truth**

572

573 With an overview on the meaning of ‘forensic’, ‘humanitarian’ and ‘identification’, in the
574 ordinary sense of the words, provided, the following will concentrate on the meaning of the
575 phrases ‘forensic humanitarianism’ and ‘humanitarian forensic action’ as well as ‘forensic
576 identification’ and ‘humanitarian identification’ (Tidball-Binz and Cordner 2022; Moon 2016;
577 Parra, Zapico, and Ubelaker 2020). These ‘hybrid terms’ have gained significant traction
578 over the past years in both academic literature and in claiming these areas of activities as
579 distinct. Again, the argument for exploration centres around the concern for families of the
580 missing and how practice under these phrases affect their interests in relation to advancing
581 the right to know the truth. Therefore, it is worth examining their use, application and
582 implications for the right to the truth.

583

584 ***5.1 Forensic humanitarianism***

585

586 *Forensic humanitarianism* has been defined by Moon as a branch of
587 humanitarianism (that is human practice for the benefit of other human beings and to
588 improve humanity) and ‘entails the exhumation of mass graves in the effort to establish,
589 forensically, the individual and collective identities of the dead victims of mass atrocity, and
590 the causes of their deaths’ (Moon 2016: 49). In her conceptualisation the purpose of forensic
591 humanitarianism is to employ forensic methods to both ‘the *adjudication* and *amelioration* of
592 human suffering’ (at 52). It speaks therefore clearly to the forensic purpose of serving the
593 legal realm whilst also advancing general relief for those that have suffered in, it is assumed
594 context that would be guided by international law generally (i.e. human rights law *and*

595 international humanitarian law).

596 For the right to the truth therefore such action has the propensity to provide
597 information that is capable to form part of an official investigative process that is situated
598 within a broader framework of ameliorating suffering that might extend from the individual
599 beneficiary to society. Through the reference to ‘forensic’ the effective, impartial investigation
600 process is indicated for the purpose then of featuring in an official, authoritative and
601 independent report of results (to satisfy the right to the truth).

602

603 ***5.2 Humanitarian Forensic Action***

604

605 *Humanitarian forensic action* is an initiative and term coined by the ICRC. It has
606 found entry into forensic science literature (Cordner and Tidball-Binz 2017; Tidball-Binz and
607 Cordner 2022; see also Parra, Zapico, and Ubelaker 2020). Crucially in its definition,
608 humanitarian forensic action is framed by international humanitarian law only, which is in line
609 with the ICRC’s mandate, as ‘a range of activities that seek to alleviate human suffering and
610 protect the dignity of all victims of armed conflict and catastrophes, carried out in a neutral,
611 impartial and independent manner, free of charge and framed under International
612 Humanitarian Law’ (Cordner and Tidball-Binz 2017: 65). But it would appear that the ICRC
613 mandate extends further to offer services beyond the dictates of the law of armed conflict.
614 The ICRC website (2010) states:

615

616 In the event of internal disturbances and tensions, and in any other situation that
617 warrants humanitarian action, the ICRC also enjoys a right of initiative, which is
618 recognized in the Statutes of the International Red Cross and Red Crescent
619 Movement. Thus, wherever international humanitarian law does not apply, the ICRC
620 may offer its services to governments without that offer constituting interference in
621 the internal affairs of the State concerned.

622

623 What law then regulates such 'services' particularly in situations of catastrophe is not
624 expressly clear from the ICRC's mandate (as described on its website), but assistance can
625 be offered. However, at all times, the ICRC maintains its position as a neutral and
626 independent intermediary including when addressing missing persons cases. What the
627 ICRC is clear on is that its emphasis is not on justice and accountability mechanisms but
628 rather centres on the needs of individuals, be that direct victims or family, affected. And
629 indeed, the humanitarian approach adopted is different, though complementary to a 'rule-of-
630 law-based' approach (no author 2017: 544). It is in that sense that the word forensic may jar
631 with the neutral and independent approach outside a legal context as per the ICRC
632 mandate, since the word forensic does denote the legal if not criminal realm. Therefore,
633 bracketing out the word forensic and substituting with the word scientific may be the more
634 precise terminology to use; i.e. the use of sciences to advance humanitarian activities that
635 would assist in both preventing and resolving missing persons cases and bringing answers
636 to their families.

637 In its efforts to work toward identifications (not actual identification) scientific
638 humanitarian action offers powerful information for the advancement of the right to the truth.
639 Particularly through its victim-centred focus, the victim's involvement and the wider
640 consideration of atrocities in context, important core elements of the right to the truth can be
641 met. Dignified management of dead bodies is at the forefront of humanitarian forensic action
642 (Rosenblatt 2019). However, whilst this can assist an authoritative investigation that offers
643 clear investigative results, it does not satisfy the full effective investigative remit of an
644 investigation concerned with the perpetrators of the atrocities, nor the authoritative reporting
645 thereof as part of the right to the truth.

646

647 ***5.3 Forensic identification and humanitarian identification***

648

649 What then is the difference, if any, between ‘*forensic identification*’ and ‘*humanitarian*
650 *identification*’? At first glance, it would appear that identification of individuals may mean the
651 same whether under a forensic regime or whether for humanitarian purposes and indeed the
652 scientific standards employed for both may be the same. Whilst identification can have both
653 a scientific and a symbolic, social component (Bennett 2020) the focus here is on
654 identification as a source of information (or truth) and a precondition for the return of human
655 remains, since the return of human remains is contingent on such identification.

656 The positive identification of individuals through the use of forensic means is a legally
657 framed process resulting in the authoritative identification report (in many countries this
658 involves a coroner) (De Boer et al. 2020). According to the International Convention on
659 Enforce Disappearance, Article 24 (3) such return of human remains in the case of enforced
660 disappearance is a state obligation: ‘Each State Party shall take all appropriate measures to
661 search for, locate and release disappeared persons and, in the event of death, to locate,
662 respect and return their remains.’ And, as stressed in the two IACtHR cases relating to
663 massacres cited above, identification efforts may expressly require genetically proven next
664 of kin status. This evidences a trend towards DNA and primary identification means where
665 possible. Only upon completion of the investigation and identification processes, can human
666 remains be returned to family members, allowing them to dispose of the deceased in line
667 with their beliefs.

668 Since this is an obligation placed on states, it will involve state-facilitated investigative
669 processes and therefore an identification regiment that complies with the legally framed
670 process (i.e. forensic). Humanitarian identification, in contradistinction, might be able to
671 sever its activities from a legal investigative process, instead concentrating on ‘the recovery
672 and identification of bodies undertaken to repatriate them to loved ones, not to assess cause
673 of death or criminal responsibility’ (Rosenblatt 2019: 76). This is significant, since
674 investigations pursuing purely humanitarian goals may not be ‘of themselves sufficient to
675 meet the standard of an effective investigation’ (*Cyprus v Turkey* 2001: para 135; the case is

676 concerned with the failure to conduct an effective investigation into missing persons cases)
677 as required by European Convention Article 2 on the right to life. And thereby such efforts
678 may not fulfil state obligations with regards to the right to the truth. An issue that may arise
679 for humanitarian identification efforts is that the result may lack embedding in the
680 appropriate legal framework, thereby risking falling foul of the required investigative
681 standards. An immediate way to avoid this is to, at a minimum level, apply investigative
682 standards sufficient to fulfil both truth and justice goals, ensuring that they will be able to
683 stand-up to authoritative scrutiny (Klinkner and Smith 2020). An investigative approach
684 employing such evidentiary standards will be able to counter efforts that are 'discriminatory
685 against certain groups or that altogether ignore truth seeking, factors which may contribute
686 to ongoing cycles of violence' (Schmitt and Mazoori 2017: 68).

687 The above exploration on missing persons identification effort has concentrated on
688 the rights of the individual victims and their family as they are the ones to receive the human
689 remains along with other investigative findings. In addition to these individual and family
690 rights, there is also the legitimate interest of the wider public to consider. This, as mentioned,
691 forms part of the right to the truth in its wider ambit where investigative efforts into atrocities
692 have implications for societies and the social fabric. In that sense, identification of
693 individuals, their return to families and the commemoration in line with cultural traditions may
694 help facilitate an important collective function in terms of mourning. This too has found
695 expression in the reparation measures suggested by the IACtHR and expressions in soft law
696 such as the United Nations Commission for Human Rights, Report of the independent expert
697 to update the Set of Principles to combat impunity (also known as the Orentlicher Principles)
698 that require States to preserve the collective memory of events (UN Commission for Human
699 Rights 2005: Principle 3). Whilst not the focus of this paper, this dimension of the right to the
700 truth is nonetheless worth noting.

701

702 **6. Advancing victims' rights to the truth**

703

704 Without doubt, the families of the missing are left in a precarious legal situation as well as in
705 a situation of ambiguous loss (as well theorised by Boss 2006). In that sense, of course,
706 they deserve all the support of their communities in alleviating their hardship. The role a
707 variety of individuals, from volunteers to experts and organisations, from the impromptu self-
708 help groups and local grass-root civil society organisations to global NGOs and international
709 organisations, play is essential to advance the resolution of missing persons cases and with
710 it the right to the truth. The terms ‘the missing’, ‘disappeared’ and ‘the right to the truth’ or
711 ‘right to know’ are often mentioned together (ICTJ 2011; Amnesty 2019; ICRC 2020c, ICMP
712 2019) with the latter invoking a right to solve the fate of a missing person, and perhaps, a
713 way to access further rights, the rights to accountability and remedies. But, as explored
714 above, it is not always clear what each means within the context it is used and by whom it is
715 expressed. This is confounded by the fact that searching and finding the truth is intertwined
716 with seeking justice or efforts to secure reparations. In that sense, without clarifications of
717 definitions and practical scope of activities, there is a real danger of the law, organisations
718 and victims speaking at cross-purposes. This, in turn, does not serve victims, nor does it
719 alleviate harm suffered.

720 What is undisputed is that truth needs arise for individuals whose family members
721 have gone missing and society - no matter whether as a result of armed conflict, gross
722 human rights violations, migration or disaster. And much is at stake when it comes to not
723 knowing what happened which is why the right to the truth is seen as ‘a tool to press the
724 state authorities to live up to their obligation to disclose (and not destroy) relevant
725 information’ (Noorlos 2021: 884). The paper sheds light onto potentially obfuscated and
726 protracted areas of law, terminology and practice through the following findings:

727 In different spheres of law, international humanitarian law, international human rights
728 law, international criminal law and domestic law, the right to the truth has found expression
729 and recognition, increasingly as a free-standing right (Panepinto 2017; Naqvi 2006;

730 Sweeney 2018). Recent scholarship examining the sources of law and jurisprudence
731 increasingly suggests that the right to the truth is an enabling right: it entails an effective
732 investigation into the rights violation and context in which it arose as well as an opportunity
733 for victims to participate (contribute and receive information) and the promulgation of the
734 investigative findings. Further, it must be independent and capable of leading to
735 prosecutions. This, it would appear, is the benchmark for the right to the truth realisation. In
736 times of armed conflict, the bar for the right to the truth may be adjusted to a more limited
737 version, whereby families of the missing have the right to a search for missing persons, to
738 receive all relevant information on the missing person, and, where possible in the case of
739 death, repatriation of the dead.

740 Missing persons remains a term with disparate meaning: it flexes from missing
741 persons as a result of armed conflict only (which would trigger obligations under international
742 humanitarian law), to encompassing missing persons as a result not just of armed conflict
743 and human rights violations but also in relation to migration and disasters. This
744 inconsistency may have adverse implications for those searching for their loved ones.
745 Therefore, a clear argument for a common universal definition that applies without distinction
746 can be made. This in turn would clarify what law applies under what circumstances.

747 Confusion can also result in understanding the scope of a missing persons effort: is it
748 humanitarian, forensic and will it work towards identification? With agents offering and
749 promising assistance to the families of the victims comes great responsibility. It is their duty
750 to be candid about the processes they offer, so as to not risk inadvertently misleading
751 through the choice of phraseology. This requires clarity on questions such as: what is the
752 purpose of missing persons investigations and support systems? Are the efforts intended to
753 build capacity and put measures in place to further the identification process? Is the missing
754 persons effort geared toward alleviating, as far as possible, the anguish and suffering
755 (psychological, economical or otherwise) from not knowing? Is the positive identification
756 (where possible), including a death certificate (or declaration of absence) and return of

757 human remains the main goal? Are the processes geared forwards a full and effective
758 investigation and realisation of the right to the truth by working towards identification, return
759 of human remains and accountability processes? These are important distinctions as they
760 may imply differing levels of achievements regarding truth advancing measures vis-à-vis
761 justice avenues available to victims. Transparency in approach and investigative evidentiary
762 standards will mitigate against unrealistic expectations or shortcomings in the missing
763 persons effort, and crucially advance elements of the right to the truth regardless of
764 institutional mandate.

765 Therefore, three points for policy and practice emerge: (1) where-ever possible the
766 human rights derived definition of the right to the truth should apply (in terms of tis content)
767 for it has the greatest propensity to realise the truth needs vested in the individual (as well as
768 for society). (2) Whilst the missing persons Resolution of the UNSC is a most welcome
769 addition to the impetus for action to solve missing persons cases, a broader definition in
770 international law would be preferable. (3) Finally, the right to the truth involves the full,
771 independent investigation of missing persons cases that are capable also of securing
772 avenues for justice. With that in mind, actors in the field ought to be clear what element of
773 the right to the truth they can advance and which they are unlikely to fulfil.

774

775 **7. Conclusion**

776

777 This contribution puts legitimate victim interests as the starting point of its inquiry to explore
778 the interplay of the law, use and choice of definitions and corresponding practice. It revealed
779 the following core findings: after an analysis of the legal spheres it proffers an inclusive,
780 standard conceptualisation of the right to the truth demanding an authoritative investigation,
781 capable of leading towards accountability mechanisms, with victim involvement, resulting in
782 an authoritatively and independently reported account of what happened to the individual
783 and explanation of the wider socio-political context.

784 An examination of the various missing persons conceptualisations revealed that
785 there is overlap but not unanimity. That said, actors involved in missing persons efforts tend
786 to adopt a broad view of missing persons that would go beyond missing persons as a result
787 of armed conflict only. This in turn aligns with the more inclusive conceptualisation of the
788 right to the truth.

789 Core actions falling under missing persons identification efforts have been examined
790 as to their meaning. Furthermore, actions labelled by 'constructed phrases' such as *forensic*
791 *humanitarianism*, *humanitarian forensic action*, *forensic identification* and *humanitarian*
792 *identification* were scrutinised as to their propensity to realise the right to the truth. From the
793 analysis above, there is no doubt that different organisations and institutions have invaluable
794 contributions to make in solving missing persons cases, offering support-systems, advancing
795 identifications and furthering the realisation of the right to know the truth. They all strive to
796 advance the plight of victims putting the families of the missing centre-stage.

797 What this contribution has also highlighted, is that their role is to abide by the
798 principle of transparency in relation to what they can achieve and what not. Most importantly
799 it highlights the need to adhere to investigative evidential standards allowing all actions to
800 withstand authoritative scrutiny, as this will safeguard victims' needs and rights. While
801 victims' rights and needs may not be immediately realisable, all must be done to ensure they
802 might be.

803 Of course, states are primarily responsible for the realisation of the right to the truth.
804 Identification of missing persons, the issuing of a death certificate, the conduct of an
805 effective investigation and the reporting of those investigative results are authoritative acts at
806 state level. But international actors have an important, and at times invaluable, role to play
807 through their policy and practice. In fact, there are calls for greater accountability and
808 scrutiny of international organisation (Boon and Mégret 2019; Committee on Legal Affairs
809 and Human Rights 2013) giving credence to this inquiry's recommendations. After all,
810 speaking with a clear and, where mandates render it possible, unified voice is more likely to

811 compel states to act for the benefit of the families.

812

813 Word count without bibliography: 8444

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