

Law and State Practice in Armenia: Dealing With the Issues Concerning the Search, Exhumation and Identification of Missing Persons in Conflict Zones

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Abstract

This article deals with missing persons in Armenia. So far around 5,000 people from all contexts in the Nagorno-Karabakh conflict have been reported as having gone missing. This article contextualises the democratic and human rights situation in Armenia and argues that if progress is to occur, there needs to be coordinating mechanism involving all conflict parties to search, recover, and identify the missing. One sign of progress is that a new Commission – the Inter-Agency Commission on POWs, Hostages and Missing Persons – was established in Armenia in 2019, and a new decree adopted. However, it needs to be reformed to allow it to be better suited to achieve the necessary goals. The study examines the law on the missing finds that there is much confusion about the legislation, as it is scattered and often vague and unclear. The laws are aimed at, and applicable to, criminal cases, and not the humanitarian nature of such instances. It therefore argues that a new law ought to be adopted. A variety of recommendations are made in the paper such as the need to enhance information collection, to find potential burial sites, and to systematically map and protect possible burial sites to ensure that future recovery and identification processes are not hindered.

Keywords:

Missing Persons, Armenia, Azerbaijan, Nagorno-Karabakh, Democratisation, Human Rights, International and Domestic Law, Conflict

Introduction

This article deals with missing persons in Armenia who went missing because of the conflict between Armenia and Azerbaijan over the Nagorno-Karabakh region, mainly in

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the 1990s.¹ About 36,000 people have been killed over the years, with around 30,000 being killed during the conflict in the 1990s (Cornell and Shaffer 2020, 14). About 5,000 people from all sides were reported as having gone missing, with another few hundred people going missing during the 44-day war in 2020, which are not included in the 5,000 total. The numbers of missing reported from the three areas before the 2020 war are Armenia (518), Azerbaijan (4022) and Nagorno-Karabakh (469). No exhumations have occurred in Armenia or in Nagorno-Karabakh since the 1990s, but at least one site has been exhumed in Azerbaijan. So far, DNA samples have been collected from about 20 percent of families of missing persons. A new commission, the Inter-Agency Commission on POWs, Hostages and Missing Persons, was established in 2020 in Armenia, and a new decree was adopted to deal with these missing persons.

This article provides an overview of the historical, democratic, and human rights situation in Armenia over the past 30 years, since independence. This is done to contextualise the issues of missing persons, but also to understand how the country has dealt with these issues. The paper then examines the context in which people went missing during the war with Azerbaijan. The study surveys the law regarding missing persons in Armenia and finds that there is a lot of confusion surrounding the legislation, which is scattered and often vague and unclear. The regulations concerning the process of searching for, recovering, and identifying the missing are aimed at and applicable to criminal cases, and hence are not appropriate to the humanitarian nature of missing persons cases. The paper argues that a new law ought to be adopted.

A variety of recommendations for dealing with the issues are made, such as the need to enhance information collection, to find potential burial sites and to systematically map and protect possible burial sites to ensure that future recovery and identification processes are not hindered. It is also recommended that exhumations and the identification process occur as soon as possible. Moreover, if progress is to occur, a process of dialogue and discussion between Armenia, Azerbaijan and Nagorno-Karabakh is needed. In terms of support for affected families, while the International Committee of the Red Cross (ICRC) and others have been working on this, the state of Armenia should be providing much more assistance and an Office of Missing Persons ought to be established. It is also recommended that Armenia ratify the Rome Statute of the International Criminal Court. So too should the country adopt the 30th of August (International Day of the Victims of Enforced Disappearances) (Sarkin 2013) as a national day so that each year the issues of

¹ On the conflict itself see Broers (2019) and Askerov (2020).

missing and disappeared persons can be commemorated in Armenia as a sign of respect and solidarity with the victims' families.

Methodology

As noted in the Introduction to this Special Section this article is original qualitative research including fieldwork set within a socio-legal paradigm, with the study intended to be both academic and policy research. It was done by performing an extensive literature review as well as about 20 interviews in each South Caucasus country. To do the interviews, a research trip was made to Armenia in 2020. The interviews in Armenia were conducted by the author himself, with the assistance of a researcher and interpreter. Many meetings were held with various government and state agencies, the Office of the Human Rights Defender (Ombudsman), many NGOs, lawyers, several associations of families of the missing, and several relatives of missing persons. The ICRC was very supportive and granted interviews on its file for the country, as well as on the issues of the missing in general. The people interviewed were given guarantees of confidentiality to ensure that the discussions were open and frank. Much of the data was given based on not disclosing the source of the information.

The purpose of the research is to understand the importance of the missing persons issue in Armenia, in the broader context of the conflict that has existed between Azerbaijan and Armenia over the last 30 years. This paper aims to identify what the issues are, what has been done already, and then what needs to be done to address the matters under investigation to try and make progress on finding the people who are missing.

The Historical, Democratic and Human Rights Context in Armenia

Armenia is found in the Caucasus region spanning the areas of Eastern Europe and Western Asia (Jones 2013). Its neighbours are Georgia, Turkey, Azerbaijan, and Iran. It declared independence from the Soviet Union in September 1991 after a referendum, but that independence was only recognised in December 1991.² Since gaining independence, Armenia's democracy has been tenuous. In fact, political freedoms and human rights saw a reversal in the early years of independence (Payaslian 2011, 24), and did not see much improvement until 1998 (Bravo 2006, 505). Before 2008, presidential powers were increased, and nine political parties were banned.³ Armenia's democratic trajectory has

² See further Payaslian (2011).

³ See further Lebanidze (2014).

therefore been characterised by breakthroughs, preceded by years of backsliding (Lanskoy and Suthers 2019). The problem has been that Armenia's identity has until the last few years been informed by the legacy of Soviet authoritarianism. It has encountered problems of succession and the process of electing new leaders has been a touchstone for civic action (Lanskoy and Suthers 2019).

It is specifically since 2018 (Terzyan 2019) that major democratic and human rights improvements have occurred in Armenia because of the Velvet Revolution⁴ (Rosner 2020; Terzyan 2019, 34). The political situation has moved to a parliamentary democracy with greater human rights protections. Amongst others, political expression has increased, as has the independence of the judiciary, and media freedom and independence (Freedom House 2020a). Armenia's national human rights institution (NHRI), unlike other institutions in the region (Reif 2020), besides Georgia, has been accorded an A grade status (Glušac 2020, 15). This is the highest out of three grades that such institutions can be accorded by the international institution that ranks such bodies. However, the level of trust accorded to the Armenian NHRI by the citizenry of the country has been questioned (Zurabishvili and Zurabishvili 2019). In 2020, Armenia was classified as "Partly Free" by Freedom House, with a score of 53 out of 100 in 2019 (Freedom House 2020b). However, it is still not seen to have "attained full-fledged democratic consolidation and respect for human rights" (Badalyan and Vasilyan 2020, 514): Armenia is still characterised as a semi-consolidated authoritarian regime (Freedom House 2021). What can be detected since the Velvet Revolution is greater willingness by the state to embark on legislative reform to deal with matters such as missing persons. Thus, in 2021, for example, Armenia reformed its Criminal Code, which will enter into force in July 2022.

The conflict with Azerbaijan over Nagorno-Karabakh has dominated Armenia's political, economic, and social situation since its independence (Iskandaryan 2018). It is seen to be an intractable conflict (Forsyth 2013, 652). It has had a long-term effect on peace and stability in Armenia, but also in the region (Mikaelian 2018). As a result, Armenia's economic circumstances have suffered severely, and the ongoing tensions have lingered for decades (Irfan, Nawaz, and Ahmed 2021).

The recent war in 2020 has threatened Armenia's democratic reform process. The conflict reshaped the geography of the region with Azerbaijan winning back a lot of the territory it had previously lost to Armenia. The backlash to its defeat in the war and its loss of territory to Azerbaijan caused domestic difficulties in the country and may in the future

⁴ On the Velvet Revolution see Iskandaryan (2018) and Broers and Ohanyan (2020).

imperill the government of Armenia's reformist agenda. As a result of the pressure on the government the 2020 war created crises for Armenia's national security, sovereignty, and governance (Askerov 2020). The result of this has been the downgrading of Armenia's National Democratic Governance rating from 2.50 to 2.25 (Freedom House 2021). Similarly, Armenia's Democracy score has fallen from 3.00 to 2.96 (Freedom House 2021). Nevertheless, Armenia has made significant democratic advances in the last few years (Grigoryan 2019, 172). However, the country is burdened with the immense task of reversing decades of kleptocratic rule "by a criminally corrupt regime" that set the precedent for soaring poverty, judicial incompetence, and high debt (Lanskoy and Suthers 2019). Whether it can become a viable and constitutional democracy hinges on whether it can dismantle its dependence on the previous oligarchic system (Lanskoy and Suthers 2019). It also must entrench greater human rights protection and do more to align with democratic norms.

These are important issues generally in the country, but also as they play out in the way the state deals with and responds to issues concerning the missing. As will be reflected below they have a critical bearing on the laws, practice, institutions and other matters concerning missing persons.

The Context of the Missing in Armenia Over the Last 30 Years

The origins and reasons for the conflict over Nagorno-Karabakh are important to understand as resolving the political issues concerning that territory will have a dramatic effect on being able to make progress on finding the missing.

The context concerning the missing in Armenia originates from the dissolution of the Soviet Union. As the Soviet Union weakened and began to fragment in the late 1980s and early 1990s a variety of conflicts broke out because of various territories and the people in them wanting specific results in that breakup, with some wanting self-rule or to be part of specific entities. Nagorno-Karabakh too was affected by such matters (Askerov 2020). However, the issues over this area are not new and in fact the territory has been disputed by Azerbaijan and Armenia for more than a century (Ruys and Silvestre 2021, 668). While Nagorno-Karabakh was administratively part of the union republic of Azerbaijan during the Soviet period, most of its inhabitants have been Armenians. Armenia has claimed that the people who live are entitled to self-determination, which they say they enacted by referendum in 1991, and they made their choice not to be part of Azerbaijan.

As a result of the disintegration of the Soviet Union in 1991, the war over Nagorno-Karabakh evolved into an inter-state conflict, since Armenia and Azerbaijan became independent states at the end of 1991. The war from 1992 to 1994 saw many thousands of people being killed in the conflict, which lasted in its active phase until 1994. Many people also left the area. As a result of the war, Azerbaijan lost some 13.6 percent of its territory to Armenian control because of the conflict (de Waal 2003, 240). This has caused considerable tensions between the two states. Since the mid-2010s, there have been regular flare-ups between the countries.

In 2020, a war occurred between them (International Crisis Group 2020) in which about 7,000 soldiers and civilians were killed, and hundreds went missing (Badalian 2021). It has been reported that the number of missing persons from 2020 was about 700 in 2021 (Simmons 2021), but was believed to have fallen to 200 Armenians, 10 Azerbaijanis and up to 50 Armenian POWs who were still in custody in Azerbaijan in March 2022, after many cases had been found with the assistance of the ICRC and Russian peacekeepers.

As far as the effect of the cases of missing persons are concerned, the families have been living without any news of their loved ones since the 1990s. The families live between hope and despair. These are issues of major importance as there are ongoing tensions between the two countries. As was noted in 2007 by the Parliamentary Assembly of the Council of Europe (CoE), and which is still true today: “The issue of missing persons in Armenia, Azerbaijan and Georgia continues to cause tremendous suffering for the families of missing persons. It also fuels tension in the region and hampers efforts to find a peaceful solution to the conflicts over the regions of Nagorno-Karabakh, Abkhazia, and South Ossetia. Resolving the issue of missing persons could contribute to reducing levels of hostility, mistrust and intolerance, building confidence in the region, and facilitating efforts to find a political settlement to the disputes in the region” (COE Parliamentary Council 2007).

As a result of concerns about how such cases are dealt with, the EU Parliament noted in May 2021 that: “failure to disclose information regarding the fate and whereabouts of missing persons may amount to enforced disappearance, which both Azerbaijan and Armenia have committed to preventing; [the Parliament] calls on all sides to clarify the fate and whereabouts of the disappeared and to treat dead bodies with dignity” (European Parliament 2021). To try and assist in this regard, interestingly, Facebook has offered its services to locate and identify prisoners of war, as well as those who have gone missing, using the assistance of local people in the areas where the conflict

was occurring (Mihir 2021). Facebook has also been playing a role as far as the language that is used between the parties. Thus, in 2021, Facebook upheld a ban on a post made on their site which they found used derogatory language and showed disdain for the people of Azerbaijan (Bacchi and Asher-Schapiro 2021). These types of postings, speeches, and other types of incidents, such as the destruction of cultural sites, promote hostilities and undermine efforts to find solutions to the conflict and deal with issues such as missing persons. As noted, this is a part of the harsh exchanges that occur between the parties which exacerbate tensions between them. So do allegations that prisoners of war have not been killed and some not returned. Videos are continually circulated in Armenia that seem to show Armenian soldiers and civilians being ill-treated and some beheaded during the 2020 war (Shirinian 2021, 10).

Since the end of the 44-day war with Azerbaijan in 2020, there have been frequent demonstrations in Armenia by the families of those who have gone missing. Marches have been held and crowds have assembled at the offices of the Ministry of Defence (Natiqqizi and Mejlumyan 2020). It was reported that when the head of the Committee on Missing Persons and Captives, Colonel Vitaly Voskanyan, addressed the crowd he “was shouted down.” “Just like a soccer ball, we are being sent from the MoD to the Red Cross, to the morgue,” one woman shouted (Natiqqizi and Mejlumyan 2020).

Thus, the issue of the missing in Armenia is one that creates much anger towards Azerbaijan, which is alleged to have killed prisoners of war and to be hiding others, but also anger by Armenians towards Armenia itself, for doing too little to find these people. Thus, dealing with the missing is essential because of the negative attitudes and sentiments that these unresolved issues generate towards both governments on the part of the public in Armenia, which are another reason why long-term peace between the countries has not been able to be achieved. However, it is important to note that it is the nature of the core issue contested by the two states, the status of Nagorno-Karabakh, that is an underlying reason why so little cooperation has occurred between the parties. The fact that there are contested borders and an unrecognised entity at the heart of the conflict has meant that access to the areas where many of the missing may be presumed to be found has been difficult. In this regard, it is important to note that there has been war and violence since 1988 some of which may have seen people abducted or killed in criminal circumstances. This may see possible criminal liability for the individuals responsible, which might be a reason why some of the whereabouts of the missing has not, and will not, be revealed without processes in place to assist in doing so. While both states have reasons to find the

missing on their own territories, as well as each other's, there are conundrums for each in doing so, including the political effects.

Thus, another reason why so little progress has been made is the nested nature of the problem, whereby the conflict parties are both victims, in the sense that substantial numbers are still missing on both sides, and at the same time 'liable', as many of the missing may be so because of wartime malfeasance by their own forces (or those they were supporting) and are still missing because of their own subsequent obstruction of due process.

All parties to the conflict however have critical roles to play in solving the problems relating to missing persons. As the conflict and communal violence occurred everywhere, the information about the missing persons can be found in all the areas connected to the conflict. Finding the missing, locating graves, and recovering and identifying the persons (Sarkin 2017a) in them will only be successful with joint and cooperative processes involving all the parties to the conflict. However, the fact that territory where graves are to be found is controlled by those who have huge resentment and bitterness towards each other means that access to those sites is not possible and cooperation rare. In 2007, the CoE released a statement concerning all the conflicts in the region, in which it stated that: "it is essential to address its recommendations not only to Armenia, Azerbaijan and Georgia, but also to the 'administrations' of the Nagorno-Karabakh, Abkhazia and South Ossetia regions through the authorities of the countries concerned. It reaffirms the sovereignty and territorial integrity of Armenia, Azerbaijan and Georgia and the recommendations outlined in this resolution do not imply any form of political recognition for the regions of Nagorno-Karabakh, Abkhazia and South Ossetia" (CoE Parliamentary Council 2007). Despite this, the fact that the status of the territory of Nagorno-Karabakh continues to be contested, means that the issues of sovereignty often blind the parties to other issues. Every issue is viewed through the lens of ownership and control. The unresolved dispute over the status of Nagorno-Karabakh clouds everything and other issues often pale into insignificance.

In the absence of a long-term peace agreement between Armenia and Azerbaijan over Nagorno-Karabakh, it is likely that conflict and ongoing violence, and a lack of access to the places where many of the missing are to be found, will remain some of the reasons why they cannot be found.

The Complexities Concerning the Numbers of Missing Persons in Armenia

The number of cases of missing persons that have been officially reported is 518 from Armenia, 469 from Nagorno-Karabakh, and 4,022 from Azerbaijan. However, these numbers have been subject to variation, depending on the source as different groups report slightly different numbers. Thus, it was reported by the US State Department in 2020 country human rights reports that according to the police in Armenia, 867 persons were missing because of the Nagorno-Karabakh conflict (USA, Bureau of Democracy, Human Rights, and Labor 2020). It was further reported by them that the ICRC had processed cases of persons missing in connection with the Nagorno-Karabakh conflict and was working with the government to develop a consolidated list of missing persons (USA, Bureau of Democracy, Human Rights, and Labor 2020). Of those cases, some have been closed for a variety of reasons but not actually resolved by finding the person: 111 out of 518 from Armenia, 99 out of 469 for Nagorno-Karabakh and 222 out of 4,022 from Azerbaijan. Of the closed cases, the numbers in brackets were clarified, meaning information finalising the cases was received: 111 (72) from Armenia, 99 (36) from Nagorno-Karabakh and 222 (164) from Azerbaijan. Thus, overall, approximately 4,500 Azerbaijanis and Armenians remained unaccounted for because of the conflict (USA, Bureau of Democracy, Human Rights, and Labor 2020). Usefully, in 2015, the ICRC handed over to all the parties an updated list of the names of the missing people from Armenia, Azerbaijan, and Nagorno-Karabakh. This ensures some degree of certainty about who is missing, and families see this as an important step in moving the process of searching for the missing forward.

An interesting question is why the number of missing persons from Azerbaijan is approximately ten-fold higher those missing from both Armenia and Nagorno-Karabakh. The major reason for this is that the fighting did not take place in Armenia itself in the 1990s. There was anti-Azerbaijani communal violence, and some fighting along borders, but Azerbaijani forces were not active in Armenia. However, some of those interviewed in Armenia allege that the number from Azerbaijan may not be accurate and may have been manipulated, or that this may have been a result of the fighting occurring in places where there were more Azeris and more soldiers from Azerbaijan, and that possibly more people in these places were buried in mass graves, and thus their bodies have not been found and identified. Investigations are needed to determine exactly who went missing and what the circumstances were that led them to go missing. This would help to clarify the numbers.

As far as exhumations are concerned, no sites have been excavated or exhumed in Armenia, none in Nagorno-Karabakh, and only one in Azerbaijan. In the one Azerbaijan site, several human remains were found. However, there has been progress on collection samples from the families to be able to match them with the DNA of people found in graves. Thus, by 2020, around 1,100 blood relatives of about 350 missing persons, out of around 500 missing persons, had provided their DNA samples in Armenia (ICRC 2020b). That data was handed over to the Armenian Commission on Prisoners of War, Hostages and Missing Persons, with which the ICRC cooperates (ICRC 2020b). However, there are still many families who have not provided their DNA. In fact, there may be more missing person cases than the approximately 500 that have already been recorded, as I was told during the research that some people may not be recorded as missing because their families do not want to cooperate with the process, for a variety of reasons, including the fact that they do not want to accept that their family members are dead. This problem is complicated further by the fact that some families have left Armenia or cannot be located to provide reference samples.

The Limitations of the Process to Deal with Missing Persons in Armenia

To deal with the issue of missing persons, a State Commission on Issues of War Prisoners, Hostages and Missing Persons was established in 2000 in Armenia. It was under the leadership of the Minister of Defence and was composed of representatives from a variety of several government ministries, together with a representative of a NGO. The process was initially helpful in ensuring the exchange of hostages and prisoners of war (POWs). However, little was achieved thereafter as this paper will show.

A new (or reformed and restructured) Commission was re-established in 2018. This Commission is the Inter-Agency Commission on POWs, Hostages and Missing Persons, which also includes representation from victims' associations and civil society. A new decree was adopted in 2019 on how it is to function. The Commission is meant to hold an average of two meetings per year, but the Working Group, which is the engine room of the Commission, and does the actual work of searching, recovering, and identifying people, needs to meet more often. There is however a need to examine the composition of the Commission as some families and NGOs do not see it as sufficiently representative of all the persons who need to be part of the process. When questioned on their views about this Commission, the families of the missing that I spoke to do not view the Commission as being effective so far. They do have some hope that they will soon see

some new political willingness because of the 2020 war and commitment to take these issues forward.

The ICRC has been involved with missing persons in Armenia for some time (ICRC 2020a). Between 2011 and 2018, the ICRC, the Armenian Red Cross, and others conducted more than 500 home visits and referrals, arranged approximately 400 group gatherings, organised about 85 commemoration and cultural events, and held 25 workshops to build the skills of the participants (ICRC 2019a). The ICRC has also provided monetary support to families to help them begin small businesses and acquire specialised skills. Cash amounts were also made available to some families, while others were provided with interest-free loans for critical household necessities. The ICRC and the Fuller Center for Housing Armenia have supported 117 families with interest-free loans to help meet their housing needs (ICRC 2019a). It also visits people who are detained because of the conflict.

Providing information and educating the families of missing persons, as well as the wider Armenian public, is essential. In this regard, the ICRC has been organising meetings for the families of the missing to provide them with information on the complicated and protracted procedures involved in clarifying the fate of their family members. In 2019, the ICRC conducted 11 of these meetings for 103 family members in 10 regions of the country (ICRC 2020b). The Commission and other state agencies should also be involved in such processes, and the Human Rights Defender (Ombudsman) could play a role as well. However, the Armenian state should also provide more of this kind of support to families to help them in a variety of ways, regardless of whether the missing person was in the military or not. This is crucial as it should not matter whom the person worked for when they went missing.

To promote greater cooperation between the ICRC and Armenia, the ICRC has been discussing a Protocol with the State Commission on ways to move forward on dealing with issues concerning the missing. A Memorandum of Understanding (MOU) between the ICRC and the Commission is being negotiated. A draft was discussed during the meeting of the Commission in February 2020. In terms of that MOU, the ICRC will facilitate the data collection process for all of those missing in Armenia, Azerbaijan, and Nagorno-Karabakh, which will hopefully allow the exhumation process to begin soon.

It is necessary to be ready to proceed with exhumations and identifications as there have, already, been some searching activities, such as that in Movses village (on the border with Azerbaijan), which occurred after a request from Azerbaijan (ICRC 2019b). This

request came through the ICRC to find missing persons in neutral zones. This is not a regular practice between the two countries but should become more regular and usual if the process of finding the missing is to be realised. Certainly, such cooperation can help to build trust and confidence between Armenia, Azerbaijan, and Nagorno-Karabakh.

Processes that occurred in the past, when NGOs organised exchanges between Armenian and Azerbaijani representatives on the issues of missing persons, some of which took place in Georgia, were helpful for the process (Dilanyan, Beraia, and Yavuz 2018). Meetings were also held in Turkey in the scope of different trust-building projects (Karadeniz 2019). Such meetings have assisted in promoting greater dialogue and relationship building between the parties which can lead to progress on the missing and assist in lessening the enormous strains between the two countries.

The foremost difficulty is the lack of co-operation between Armenia, Azerbaijan, and Nagorno-Karabakh. This is indispensable to making progress on the cases of missing persons. Only by ongoing contact between the various searching commissions in the countries that work on these issues – sharing information, making requests to each other for information, providing information on where to search, and then each party carrying out searches – can progress be made. From the interviews that were conducted it came to light while there has been some data sharing, this has been often through non-official sources. It appears that little official or accurate data has been provided. The families and the associations of the families want the information to be shared and for them to be privy to that information and to see significant improvement in the results of these processes.

For meaningful advancement on the issues of missing persons to occur, a process for coordinating the work of the commissions together is needed. Accordingly, a bipartite (or tripartite if the parties agree) synchronisation mechanism is essential. This would allow the information used from one side to be used to search on the territory of another party. Such a coordination mechanism could be comprised of two people from each party, with the ICRC as chairperson. There should also be a Working Group that does the day-to-day coordinating and information sharing as well as ensuring regular and good interaction between the parties to deal with all issues that occur. The human remains on the territory of one party could be matched by using DNA with the DNA samples provided the families from another party. As the missing have been absent and buried for two and a half decades already, and because the human remains have degraded over time, there is a need to do this work urgently, as with the time passing the tasks become more difficult.

Armenia must provide more resources, including financial and personnel, to such activities. It must also provide more technology, technical apparatus, and staff to conduct the necessary tasks (Sarkin 2021a). More people with a range of technical and other necessary skills should be hired and supported to carry out this work, including those with forensic skills. The technical proficiencies of resident forensic experts should be improved to permit the work to be done in an efficient and rapid way. More experts are required to perform a variety of functions, including DNA examination. That can be done locally after the necessary training and ongoing support.

When DNA analysis begins, a neutral and impartial third party should be used to oversee the process to ensure the greater likelihood that the results of the process are accepted by the families. Without that it may be, as has happened elsewhere, that the results are disputed and not accepted. Obviously, there will be a cost which needs to be covered. Donor funding could be sought for this, even possibly from the Armenian diaspora. A variety of other international actors could support such endeavours with their experience and expertise, including the International Commission on Missing Persons (ICMP), the Argentine Forensic Team, the Fundación de Antropología Forense de Guatemala (FAFG). Nevertheless, Armenia is primarily responsible because of its ratifications of the Geneva Conventions, as well as its various international and domestic obligations.

The Need to Reform the Law on Missing Persons in Armenia

A lot of confusion exists around the legislation concerning the missing in Armenia, as it is scattered and often vague and unclear. There is no composite and complete law concerning the missing, nor are there sufficient ways to deal with the issues. The regulations are also not clear and precise.

The lack of a composite and adequate law.

The lack of an adequate law may be because of Armenia's sponsorship of Nagorno-Karabakh, and the implications of the fact that most of the missing are Azerbaijani. Armenian foot-dragging on this issue may be related to its involvement in the Nagorno-Karabakh conflict and the asymmetry with Azerbaijan in terms of the number of missing persons. Consequently, enshrining certain principles and best practices on this issue may potentially lead to more liability for Armenia. The fact that Armenia and Azerbaijan are involved in a conflict where both sides have missing persons might be a key factor in slowing progress on this issue. This issue, like everything else, has been politicised and

parties view their practices through a competitive lens, whereby they link adopting international best practices to the risk of increasing their own liability.

Problematically, the laws concerning the search for, recovery and identification processes are aimed at, and applicable to, criminal cases, and not the humanitarian nature of the missing persons cases. This means that the law is not designed sufficiently to deal with humanitarian types of cases which is what missing persons cases are. It also seems that under the Armenian Criminal Procedure Code, an exhumation is an investigative action that requires a court order and relatives' consent. Therefore, it appears that before an exhumation can occur, it is necessary to obtain the family's consent. However, in many of these cases, because it is unclear who the person in the grave might be, the authorities will not know which family needs to give consent. Most importantly, there needs to be an open criminal case for an exhumation order to be given. These cases are, however, not mostly criminal in nature unless they were related to communal violence. Generally, therefore these cases should not be treated as criminal in nature, as that has a deeply negative effect on the process of dealing with them. If a case turns out to be criminal in nature, then such a case could be opened so not all cases should be treated as criminal ones. Thus, the fact that authorities do not always know who will be found in a specific grave and that there needs to be a criminal case often impedes progress. As a result, there ought to be clarity on these issues and methods ought to be established to move expeditiously towards the search for, recovery and identification of those who are missing.

As a result of the present law being vague and scattered across a variety of laws that deal with criminal law, criminal procedure, laws of evidence, exhumation processes, the role of various state officials and so on, they are often not conducive to the needs of the process. There is lack of certainty about how search and recovery processes are to be carried out. As noted above, at present, it is seen that such processes in Armenia fall within the criminal law and criminal procedure and are not viewed as a humanitarian process from a legal point of view. However, the law also ought to be directed to allow the search for the missing to be within a humanitarian dimension, for the cases from the conflict that took place 25 years ago. The emphasis ought to be on how to support and assist the families. Thus, it is important to ensure that these processes can now proceed without too many obstacles for the families who need to be able to resolve these matters as quickly and easily as possible. It should be possible in the interim, until a new complete law is drafted, for a provisional process within the criminal context to proceed that allows these procedures to occur without too much difficulty.

Attempts to draft a new law

There have been attempts to draft a specific law on the missing for more than a decade. A draft law on missing persons was developed in 2010–2011 to try and centralise the law and end some of the problems mentioned above. The working group that drafted that law usefully consisted of representatives from several state structures, the Human Rights Defender, the ICRC, and the civil society organisation, Helsinki Citizens' Assembly-Vanadzor. The draft law was based on model laws used in other countries. Suitably, for example, one provision provided for the establishment of a National Information Bureau of Missing Persons. However, the draft law seemingly got stuck in the Ministry of Justice and no progress has been made for many years.

This law ought to be revived and implemented, or a new law ought to be drafted using the old draft as a model. The process of drafting a new law should not impede the current process of dealing with the missing, as the process of requesting a dedicated prosecutor or a judge to grant authority to start searching for and recovering missing persons using the present laws should be a straightforward step.

Supporting not only military but also civilian families

Critically, at present the law and practice of state agencies in the provision of services to the families of the missing is often focused on military personnel, and not so much on civilians. Many policies and programmes for assisting these families are more often for families of military personnel. For example, government decrees N 88 and N 916 set out the financial allowances to be paid to those who are victims of military actions, which is seen to exclude non-military people. Decree N 580 does apparently provide some social benefits to victims and family members of missing persons in general. I was told by the deputy minister that the state does not have data as to whom receives what amount. From the interviews I conducted of various family associations, including those focusing more on military families, it became clear that those linked to the state because they represent military families, are receiving financial assistance, but very small amounts. Other associations have not received support.

It is, however, important to note that people from both categories are missing in Armenia. More ought to be done to support families of the missing, regardless of whether they were in the military or not. While currently missing military personnel are recognised

in a variety of ways including their family members getting benefits, all families ought to be recognised and supported.

Problems with the Civil Code

There are a variety of other problems regarding the legislation on missing persons. In this regard, the Civil Code of Armenia refers to missing persons in relation to declarations of death. The Civil Code regulates such declarations in Article 44 and the consequences of such a declaration are set out in Article 45. Article 47 provides that a military person or other citizen missing in connection with military operations may be declared dead by a court two years after the end of those operations. Therefore, a court application is needed and can only be processed two years after the end of hostilities. However, families do not always want to go to court and have their missing relative declared dead because they are not prepared to accept that their loved ones are deceased. In those circumstances, they may face problems with various rights, such as property rights and the right to inheritance (Sarkin 2017b).

The law is thus problematic but also scattered. Thus, a specific, standalone new law on missing persons needs to be designed, focusing on the context of the situation and the needs of the families of all missing persons. The regulations ought to be clear, ought to be in one place and their contents ought to be relevant to the needs of the missing and their families today and to preventing and dealing with such cases in the future.

A variety of measures should be built into the law promoting the use of identity documents and identification dog tags to make identification easier for those who are killed as well as the preparation of proper medical records for all soldiers before conflicts begin again to ensure that finding people is made easier. Also needed are better provisions on proper registers, an office to deal with missing persons, and better processes that promote communication, and better processes that provide for the evacuation of the wounded and then the deceased after the conflict ends to ensure that they are properly buried and that all types of steps are taken to document the cases for the sake of the families.

Critically, the law should not only focus on those who go missing because of conflict, but also deal with other types of missing persons, including those who cannot be found for a variety of other reasons, including migration (Sarkin 2015).

Conclusion and Recommendations

Progress on dealing with the issues connected to searching for, exhuming, and identifying missing persons in Armenia has been slow. Few people overall have been found and the processes in place have not been sufficiently useful to make much progress. While many people missing from the 2020 war have been found, the problem is that the outstanding people missing from the 1990s still have not been accounted for. Thus, the process to deal with those cases ought to be speeded up, however the obstacles to doing so are going to increase, as with the passing of time obtaining the necessary information on where graves are will become even more difficult. Some 30 years after the main conflict in the 1990s, people who have such information will have themselves already died and others will not be able to recollect the information necessary to assist the search process. Therefore, with the information that is available, searching for the graves, recovering the bodies, and identifying them must occur as soon as possible. The families want to be able to know where their loved ones are and have finality on whether they are alive or dead. Dealing with the issues will also have benefits for the region as a whole and should play a part in reducing the tensions between Armenia and Azerbaijan. These processes could also play a part in a reconciliation process between the people of these countries, which is sorely needed (Sarkin 2021b).

While there have been examples of local-level exchanges aimed at promoting better relations between the people on the ground in various places, such as the local agreements on property exchange and heritage protection between villagers in Kyzyl-Shafag and Kerkenj,⁵ much more is needed to foster better relationships and ensure that conflict and violence are less likely. However, while the leaders of the two countries met a number of times in 2020 and 2021 and seem to be open to finding some sort of political accommodation, that mood has not always been transmitted to or accepted by the people in the two countries. The public in Armenia, partly because of the loss of a lot of territory to Azerbaijan during the 2020 war and the reports of human rights violations that were committed during the conflict, remain extremely hostile to Azerbaijan. It is useful, however, that processes to search for those missing because of the First Nagorno-Karabakh War between Armenia and Azerbaijan, and to determine their fate, conduct exhumations and identify them, are supposed to be underway as a result of the tripartite Declaration signed by the President of the Republic of Azerbaijan, the President of the Russian Federation and the Prime Minister of the Republic of Armenia on November 10, 2020. This has resulted in about 100 human remains from the First Karabakh War being

⁵ See <https://ge.boell.org/en/2014/02/07/beyond-karabakh-conflict-story-village-exchange>

handed over from Armenia to Azerbaijan, including the remains of seven people in February 2021 (Azerbaijan, State Security Service of the Republic of Azerbaijan 2021). While about 150 prisoners of war have been returned by Azerbaijan to Armenia since 2020, including eight in February 2022, various breaches of the agreement have been reported, including a refusal by Azerbaijan to handover other POWs (ARKA News Agency 2022).

However, for the political mood to be tempered, and the missing persons to be really focused on and people found, there needs to be visible cooperation between all the domestic and international actors to deal with the conflict. Positive results of these processes need to be shown. For this to occur, there also needs to be official contacts and processes established between the various commissions, maybe with the help of a neutral third party such as the ICRC, to ensure collaboration and cooperation between them. These efforts too will assist with confidence building measures and ensure that much more will be achieved on the ground to resolve the issues. Specifically, all parties (Armenia, Azerbaijan, and Nagorno-Karabakh) need to cooperate to allow a systematic process of mapping and protecting graves to ensure that this can occur as expeditiously as possible. The necessary resources, both human and technical, need to be put in place. Therefore, there is a need to ensure that local expertise is available to carry out this work by hiring and training a range of people with the requisite backgrounds. These processes need to be conducted openly, ensuring that the families of the missing are consistently consulted and apprised of developments (Sarkin et al 2014). Until now, the families have been assisted to only a limited degree and this support by the state should increase. All families, not just families of those in the military, ought to be supported. The families also need assistance with their legal needs to deal with issues such as inheritance, pensions, declarations of death, etc. Critically, Family Needs Assessments should be carried out so that much more is known about the problems the families face and so that remedial steps can be put into place. One of the processes that ought to be put in place to assist the families is a well-resourced and well-staffed Office of Missing Persons. This will allow for a single agency that the families could approach rather than needing to go to a variety of government offices to deal with all their needs, including their economic, legal, and administrative and other issues.

As can be seen in this research, there is no composite law on the missing in Armenia, only scattered sections of law dealing with missing persons in various pieces of legislation. These laws ought to be reviewed and reformed and a process to draft a single law ought to be established. Much more ought to be done to ensure that there is sufficient

knowledge about the law and the processes involved. Therefore, ongoing, and regular training for military personnel on issues of missing persons is necessary.

Armenia needs to show its commitment to these issues in a variety of ways, such as by declaring August 30 each year a national day in the country. This day is commemorated around the world as the International Day of the Victims of Enforced Disappearances. Armenia should therefore also mark that day as a sign of respect and solidarity with the families of the victims. There also ought to be further development of archives to ensure the safekeeping of records.⁶ This, together with other processes of remembrance and memorialisation, is essential. Providing places and spaces for memorialisation and commemoration for all victims in Armenia, regardless of the reason of their victimhood, is crucial.

It is useful that Armenia is examining whether a transitional judicial process is necessary for dealing with past events. There is a plan, which is part of a four-year judicial reform strategy, developed by the Ministry of Justice, which was released in the end of 2019 for public discussion. According to the reform strategy, a fact-finding commission is proposed for gathering information about human rights violations that occurred from 1991 to 2018. This process should, however, deal with missing people. This is an opportunity for Armenia to deal comprehensively with these issues.

Therefore, as can be seen, there is a lot that needs to be done in Armenia to resolve the outstanding cases of missing persons from the conflict over Nagorno-Karabakh. It is also necessary to reform the law and processes to deal with missing persons and enforced disappearances. Such processes will be assisted if Armenia joins more international instruments and institutions, and the ones that it is involved in provide more oversight, and engage more, on these issues (Sarkin 2019).

⁶ On the importance of this generally see Baumgartner and Ott (2017).

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