

Law and State Practice in Georgia: 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 the issues associated with missing persons in Georgia, which are deeply interrelated with the conflicts over the disputed territories of Abkhazia since 1992 and South Ossetia from 1991. The article examines the historical, democratic, and human rights context of these issues in Georgia to understand the situation in the country and its effects on how the missing are dealt with. The article deals with the various processes that are working on the missing. The legislation concerning missing persons in Georgia is reviewed and found to be scattered, incomplete and in need of reform. The article also recommends that Georgia allocate more resources to its efforts and better assist the families of the missing. It is also recommended that a Families' Needs Assessment be carried out and that an Office of Missing Persons be established.

Keywords: Missing Persons, Georgia, Abkhazia, South Ossetia, Democratisation, Human Rights, International and Domestic Law, Conflict

Introduction

This article deals with missing persons in Georgia. The issues of the missing are deeply interrelated with the conflicts (Hammarberg and Grono 2017) over the disputed territories of Abkhazia since 1992 (Frear 2014, Coppieters et al. 2004) and South Ossetia from 1991 (Fard and Koolae 2020). The issue not only concerns Georgia as the conflicts involved several parties and the territory where the missing may be buried is not only in areas under Georgian government control, but also in areas controlled by other parties.

The purpose of the article is to understand the importance of the missing persons issue in Georgia. The article 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. It is hoped that the research and policy recommendations may be received and have some impact in Georgia, but may also be helpful in other parts of the world where similar issues exist.

First, the article provides an overview of the historical, democratic, and human rights situation in the country over the last 30 years since independence to contextualise the issues of the missing and provide a greater understanding of, and backdrop to, the issues. This is also important because the democratic and human rights situation in the country has affected the way these issues are dealt with, how institutions are created, how transparent and open they are, but also how victims and their families have been dealt with. Therefore, this context is also useful to explain why little progress was made in previous years in solving these cases. The developments over the last decade on the democratic and human rights front are also important to apprehend what has happened and why there has been change. Thus, while there have been positive democratic improvements over the last ten years or so, there have also been some negative developments that have held the country back. To some degree, the previous Soviet attitude towards democracy and human rights still exists, which plays out in the way the issues concerning missing persons are dealt with. Therefore, it is necessary to understand the governance context, as well as the context of missing persons, to appreciate the setting in which all these issues play out.

Thus, the institutional setting to deal with missing persons is examined, as well as the law concerning missing persons in Georgia. In this regard, the law is evaluated and found to be scattered, incomplete and in need of reform. The article notes that while a lot has been done to search for, recover, and identify missing persons, much more effort by all the parties is needed, which can only occur with increased dialogue and cooperation between the actors with the support of the international community. The article also recommends that Georgia allocate more resources to its efforts and to assisting the families of the missing (Sarkin 2021a). It is further recommended that Families' Needs Assessments be carried out and that an Office of Missing Persons be established.

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 is intended to be both academic and policy research. The research was performed by carrying out an extensive literature review, as well as conducting about 20 interviews in Georgia. As with the other countries, the International Committee of the Red Cross (ICRC) was very helpful. It was interviewed on its file for Georgia and helped facilitate access to other sources.

In Georgia, many other meetings were held with various government and state agencies, the Public Defender, many NGOs, several associations of families of the missing, and individual relatives of missing persons. Of the two state missing persons' processes, a representative from

one was interviewed, but attempts to interview officials from the other process were unsuccessful. In general, access to these processes is difficult, and information difficult to come by. This is reflective of the nature of the governance system in the country, which in regard to matters perceived to be of national interest is very closed and lacks transparency.

Understanding the Historical, Democratic and Human Rights Context of Georgia

Georgia is found in the Caucasus region, spanning the areas of Eastern Europe and Western Asia (Jones 2013). Its neighbours are Armenia, Azerbaijan, Russia, and Turkey (Cornell 2007). It broke away from the Soviet Union in April 1991, after a referendum (O’Loughlin, Kolossov, and Toal 2014, Jones 2013). Georgia chose to use the opportunity to secede from the USSR and revive the independence that it had held from 1918–1921 (Jones 2014). Since then, it has had generally a trajectory towards greater democratisation, interspersed with public protests (22 December 1991 to 6 January 1992) and conflict and violence. Only for its first year of its independence, 1992, was the country classified as “Not Free”¹; from 1993 it has consistently been classified as “Partly Free” (Freedom House 1994).

Georgia has had wars, in the 1990s and 2008, over two of its territories (Abkhazia and South Ossetia) that broke away. Georgia’s image has been dented internationally by events in the country, including the loss of those territories: South Ossetia (Sotiriou 2019) and Abkhazia (Gerrits and Bader 2016), as well as its war with Russia over South Ossetia (Petrov, Gabrichidze, and Kalinichenko 2020). While the period of instability continued until the Rose Revolution of 2003, when protests in November 2003 brought down the government (Fairbanks 2004), since then, the country has been relatively peaceful, except for the war with South Ossetia in 2008, in which Russia was also involved (Nichol 2012, Khetsuriani 2008). The issues concerning the breakaway territories remain unresolved (Aprasidze and Siroky 2010).

Georgia has been attempting to democratise and bolster human rights protections within its borders (Lawson, Grier, and Absher 2019). However, there are major pulls and strains on its attempts to do so (Wheatley 2017). It has had to overcome a tremendous democratic and human rights deficit from the past (de Waal 2018). This has been a protracted process of fits and starts (Sarkin 2019). After independence, however, rather than breaking with the anti-democratic practices of the Communist Party’s rule, in many ways severe violations of human rights continued. The 1990s were largely characterised by various types of abuses, such as extrajudicial killings, the use of torture by the police, and tolerance by the state of violence against minority groups (King

¹ As determined by Freedom House in their rating system which is used throughout this article.

2001, 94). There were reports of practices such as electric shock torture against detainees and frequent beatings by the police. Human Rights Watch in 2003 alleged that the Ministry of Justice confirmed to them that “the police continued to use wind-up military field telephones as electric shock torture devices” (HRW 2003). When Georgia was trying to gain membership in the Council of Europe, the government adopted a new Criminal Code which provided, for example, for the right of individuals to seek redress for abuses. However, as soon as membership was gained, the Code was amended in such a way as to reverse those gains (HRW 2003). People were also denied fair trials because of governmental influence on the courts (Omeličeva 2010, 451). While the media were independent in theory, attacks on them were not infrequent (Broers 2005, 339).

Although there has been further democratic reform since 2012 (Benidze 2019), some things have remained the same since “procedures for the appointment of judges remain opaque while the judiciary continuously fails to maintain objective standards in politically charged cases” (Darchiashvili 2018, 160). While there has been progress on the institutional structure of the courts, there have been deep criticisms about who is appointed, and the argument has been made that many appointees are not independent of government (Nakashidze 2020). The perceived justice delivery deficit coming from the national courts can also be deduced from the sheer quantity of Georgians applying to the European Court of Human Rights – 1,404 in 2019 alone, although only 14 of those cases were declared admissible (ECtHR 2021).

The dynamics of Georgia’s democratic transition remains contested. Mariya Omeličeva (2010) argues that in the past Georgia only did just enough to keep its Western allies satisfied to make sure that they do not withdraw their support, while at the same time using the democratic space to maintain power. Omeličeva contends that whenever Georgian elites speak to Western audiences, they talk about human rights and democracy, but in reality, they continue strengthening the powers of the state. She also argues that Georgian elites have managed to maintain their practices due to their creation of better conditions for foreign investment, and also by strengthening the country’s military and security forces, and concludes that Georgia’s allies have “contributed to creating and maintaining a false dichotomy between state-building and democratization by encouraging the goal of state-building and supporting the priorities established by the Georgian government” (Omeličeva 2010, 455). These attitudes are still present in various ways in Georgia (Kabachnik 2018), including amongst some politicians and certain civil society organisations (Sichinava 2018, 8). This is borne out by an enduring lack of consensus in the country towards democratic governance (Kakhishvili 2018, 1).

Thus, the legacy of the past remains present in Georgia in various ways. This can be seen for example in the fact that the new administration has amended the Georgian Constitution but

has created loopholes to ensure that governmental powers are not weakened, thus limiting constitutional control (Darchiashvili 2018, 160). The government has also used intimidation and fear to make media outlets conform to the governmental narrative (Amnesty International 2020). The police continue to use excessive force, for instance towards protesters, for which there is impunity. Lack of accountability for the police/security forces is one of the main issues, as are complaints to the Ombudsman Office (Human Rights Watch 2019).

Georgia has been more recently embarking on new reforms, through constitutional change (State Constitutional Commission of Georgia 2018) in different areas, including human rights (Nakashidze and Sirabidze 2020). It has moreover embarked on legislative and other types of transformation, including the creation of new institutions, institutional renovation of some bodies, and the development and improvement of others (Yemelianova and Broers 2020). While the Georgian ombudsman has been accorded an A status (Glušac 2020, 15) the institution still has problems (Badalyan and Vasilyan 2020) and is still distrusted (Zurabishvili and Zurabishvili 2019).

Thus, while institutional progress has occurred, it has not always been entirely positive, as has been the case for its missing persons processes. There are also many challenges regarding civil liberties, as well as other rights, that need to be solved (Breslin and Würth 2017). The situation has not been helped by events in the country, like the violent suppression by security forces of protests about how the state is run (Oravec and Holland 2019). This approach resulted from the government's difficulty with finding the appropriate balance between the mutually contradictory objectives of democratic progression and strengthening its grip on political power (Broers 2005). While there have been some attempts to positively increase democratic development (Badalyan and Vasilyan 2020), it has recently been argued that these attempts have been "half-hearted" and have not achieved very much (Freedom House 2018), and that "progress has stagnated" of late (Freedom House 2018). This is apparent in Freedom House's *Nations in Transit* reports, where Georgia's scores have declined in recent years: in the 2020 report, its democracy score was 3.2, compared to 3.29 in 2019 (Freedom House 2020).

These issues dramatically affect the way missing persons have been dealt with. The state, initially at least, was closed to dealing with these issues in any substantive way. Over time that has changed, as will be indicated below, to allow these matters to be focused on more, but still the old Soviet thinking remains in some way. Victims are still not sufficiently catered for or incorporated into the processes to deal with the missing.

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

Background

The conflicts in Georgia that caused thousands of people to be killed and thousands more to go missing comprise the conflicts in the breakaway territories of Abkhazia and South Ossetia. War in Abkhazia began in August 1992. It developed out of long-standing demands from the Abkhazian population for separation or greater autonomy and concerns from some Georgians about discrimination and alleged preferential treatment for Abkhazians. The conflict saw a massive forced exodus of Georgians from the area. A final ceasefire was signed on 14 May 1994.

The war between South Ossetia and Georgia began in 1991 and a ceasefire was brokered in 1992. The conflict was the result of rising nationalism on the part of both Georgian and Ossetians. Many people left the area because of the conflict. There was further conflict in 2008, when Georgia endeavoured to regain the area of South Ossetia. Russia intervened in the conflict by invading and blocking the Georgian military campaign. On 26 August 2008, Russia recognised the sovereign status of Abkhazia and South Ossetia as independent states.²

The Complexities Concerning the Numbers of Missing Persons in Georgia

The total number of missing persons from all sides relating to conflicts in Georgia as of 2021 is 2,891 people. The numbers as of 2007, according to a report of the Parliamentary Assembly of the Council of Europe's Committee on Migration, Refugees and Population, were 1,763 Georgians and 197 Abkhazians from the war over Abkhazia and 10 Georgians and 122 South Ossetians from the conflict in South Ossetia. In other words, the total number of missing persons as of 2007 was 2,092 people. Another 58 people were determined to be missing because of the conflict over South Ossetia in 2008. This shows that between 2007 and 2021 many more cases have been registered because of the work done, particularly by the ICRC. This is however reflective of the fact that some families have not been willing to register their cases and thus there are still outstanding cases which have not been registered.

The figures as of 2021 break down as follows being a) 2,687 from the Abkhazia conflict in 1992–1993; 2) 146 from the South Ossetia conflict in 1989–1992; and 3) 58 from the South Ossetia conflict in 2008. People also went missing during the war between Georgia and Russia in 2008 over South Ossetia.

Of the total number of 2,891 missing persons cases, 535 cases have been closed. This breaks down as follows: Abkhazia (1992–1993) – 452; South Ossetia (1989–1992) – 57; and South Ossetia (2008) – 26. Therefore, the total number of open cases is 2,356. This breaks down as follows: Abkhazia (1992–1993) – 2,235; South Ossetia (1989–1992) – 89; and South Ossetia (2008)

² On attempts to find solutions to the conflicts see Allen Nan (2010).

– 32. Of these 2,356 open cases, the number of persons whose deaths are known but whose remains have not been returned are: Abkhazia (1992–1993) – 895; South Ossetia (1989–1992) – 28; and South Ossetia (2008) – 11. The number of those who have been located alive are: Abkhazia (1992–1993) – 18; South Ossetia (1989–1992) – 2; and South Ossetia (2008) – 5. The number of gravesites excavated, and exhumations carried out, are: Abkhazia (1992–1993) – 178; South Ossetia (1989–1992) – 3; and South Ossetia (2008) – 6. The total number of human-remains that have been exhumed is 563, which breaks down as follows: Abkhazia (1992–1993) – 486; South Ossetia (1989–1992) – 53; and South Ossetia (2008) – 24. The number of remains that have been identified and returned to their families are: Abkhazia (1992–1993) – 163; South Ossetia (1989–1992) – 0; and South Ossetia (2008) – 15. Thus, by 2020 a total of 178 human remains had been handed over to their families. The number of unidentified human-remains that have been found are: Abkhazia (1992–1993) – 323; South Ossetia (1989–1992) – 53; and South Ossetia (2008) – 9. Thus, a total of 385 human remains had not been identified. It also was reported by the ICRC in April 2021 that 14 persons had been positively identified – 13 Georgians and 1 Abkhaz – whose remains were found between 2017–2019 in Sukhum/i, Ochamchira/e, Gulripsh/i and Gagra (ICRC 2021b).

It is important to note that not all families have registered their loved ones as missing persons for a variety of reasons, including the fact that they do not want to accept that their loved ones may be dead or because they do not still live in the country. Cases from Georgia are however still being registered: in 2018, 100 new cases were registered.

The Office of the State Minister of Georgia for Reconciliation and Civic Equality in Georgia reported that in 2018 approximately 600 biological reference samples from family members of missing persons had been collected (Georgia, The Office of the State Minister of Georgia for Reconciliation and Civic Equality 2019).

Processes to deal with missing persons in Georgia

There are various processes to deal with the missing from Georgia. It must be noted that the ICRC has played a crucial role in the region in dealing with missing persons in Georgia since 2004, as has the Georgia Red Cross Society. Also involved has been a team of Argentinian forensic experts.³ The ICRC has been involved in all stages of the search for, recovery, and identification of missing persons. It has been gathering and amalgamating evidence on the whereabouts of gravesites and collecting *ante mortem* data and biological reference samples from the families. Georgia has

³ On the background to the Argentine team, and the beginnings of this type of work see Smith (2017).

enormously benefited from the ICRC's assistance in providing psychological, legal, and administrative support. The ICRC has also assisted more than 1,100 families in Georgia with their economic needs, including via micro-economic initiative projects to improve their livelihoods and help them to become self-reliant (ICRC Delegation in Georgia 2018).

Usefully, the ICRC created in March 2021 a Special Envoy for Missing Persons in the Caucasus (ICRC 2021a). This is the first time this has been done and is a useful model for other settings where there are many missing persons. The Special Envoy is tasked to work with all the parties to the conflicts in the 1990s and 2008 to find new ways to account for all the missing persons that are “more sustainable and effective over the long term than the current mechanisms” (ICRC 2021b). This is because the ICRC has recognised that the fate of more than 90 percent of missing persons remain unknown. The Special Envoy met with the Head of the State Security Service of Georgia in May 2021 to make progress on the missing (Georgia, State Security Service of Georgia 2021).

More generally, the role of an external party, such as the ICRC, is essential in resolving such cases (Drawdy and Katzmarzyk 2016). There is often a need for such an actor to play an important conciliation role and to try and limit the politics involved in such processes. However, the lack of progress made even with the involvement of the ICRC indicates how other matters still cloud the issues.

A range of processes have been set up to deal with missing persons externally and in the region, including by Georgia. The first process that deals with the missing, at least in part, is the Geneva International Discussions (GID) (European Union External Action Services 2009) and the Incident Prevention and Response Mechanisms (IPRMs) on security and stability and the return of internally displaced persons and refugees, commenced on 15 October 2008 in Geneva (Giuashvili and Devdariani 2016). The process consists partly of international talks meant to tackle the results of the 2008 conflict in Georgia and partly of mechanisms to solve problems (Allen Nan and Greiff 2013). The GID focuses on security and humanitarian matters. It is co-chaired by the Organization for Security and Co-operation in Europe (OSCE), the European Union (EU), and the United Nations (UN), and involves representatives of Georgia, Russia, Abkhazia, South Ossetia, and the United States.

In recent times, at the 49th round of the discussions in October 2019, there were discussions on simplifying the processes for border-crossing processes and for the search for missing persons (OSCE 2019). These have been ongoing for a long time. However, at the 50th round it seems that Russia, South Ossetia, and Abkhazia walked out over the situation of internally displaced persons and there were disputes about allowing humanitarian organisations unhindered

access to Abkhazia and South Ossetia (OSCE Permanent Council No. 1253 2019). While all reports of these discussions mention missing persons, all that is stated is that the issue was discussed and that progress is needed, but nothing further. It is essential that more progress is made between the parties to deal with missing persons.

In 2009, the GID parties set up several IPRMs. There have been about 90 IPRM meetings for South Ossetia (in Ergneti) and 57 for Abkhazia (in Gal/i). These IPRMs aim to “ensure a timely and adequate response to the security situation, including incidents and their investigation, security of vital installations and infrastructure, responding to criminal activities, ensuring effective delivery of humanitarian aid, and any other issues which could affect stability and security, with a particular focus on incident prevention and response” (OSCE 2009).

While the Gali IPRM has been suspended since 2018 because the Abkhazians withdrew over what was being discussed, the Ergneti IPRM has been working. In November 2018, Georgians, South Ossetians and Russians met in Ergneti to clarify the fate of 160 people from the conflicts (Allen Nan and Greiff 2013, Kustra-Pirweli 2014). These IPRM processes have faced challenges in the past as well and were also suspended between 2012 and 2016. Ways need to be found to ensure ongoing progress and that the Gal/i IPRM meets again.

The second set of processes to deal with the missing comprises two coordination mechanisms between the parties to try and make progress related to the different conflicts. The Coordination Mechanism on Persons Unaccounted for in Connection with the Events of the 1992-1993 Armed Conflict and After (the bipartite coordination mechanism with Georgian and Abkhaz participants) was set up at the same time as the other Mechanism (the tripartite mechanism with South Ossetian, Russian and Georgian participants), which addresses the issue of persons who went missing as a result of the 1989–1992 and 2008 conflicts in South Ossetia (ICRC 2016). The ICRC chairs both mechanisms (Bernard 2017).

Because the determination of the fate and whereabouts of missing persons is seen to be a critical aspect of state policy in Georgia, the government has determined that the Office of the State Minister of Georgia for Reconciliation and Civic Equality deals with these matters. This office is responsible for identifying, coordinating, and implementing activities on reconciliation, confidence building, engagement concerning Abkhazia and South Ossetia, peaceful resolution of the existing conflicts and the rights of the representatives of ethnic minorities in Georgia. The Office of the State Minister of Georgia for Reconciliation and Civic Equality has represented Georgia in the bipartite coordination mechanism (between Georgia and Abkhazia) since 2018. However, it is not involved in the tripartite coordination mechanism, where Georgia is instead represented by the State Security Service of Georgia. It would however be better if one agency

represented the state in both coordination mechanisms to ensure that both processes benefit from coordination and expertise and if that was not the state security agency.

The bipartite coordination mechanism between Georgia and Abkhazia set up the Forensic Working Group (FWG) in 2011 to establish priorities and coordinate the work of the forensic specialists involved in determining the fate and whereabouts of missing persons (Crettol et al. 2017). In May 2018 the 12th meeting of the FWG took place to agree on the exhumation plan for 2018 and the opening of gravesites. As a result of cooperation between the various parties, many gravesites were identified, with 59 being opened and 107 human remains exhumed (Georgia, The Office of the State Minister of Georgia for Reconciliation and Civic Equality 2019). The FWG met once in 2019. Usefully, to promote the ability to do the exhumation and identification work, through the ICRC, 10 Georgian and Abkhaz specialists in archaeology, forensic pathology, nursing and biology were involved in 2019 in excavating and recovering human remains. This is assisting in enhancing the skills and capacity of local experts to carry out this work. Three workshops on forensic anthropology and archaeology were held. Six Abkhaz explosive experts were trained in battlefield clearance to be able to support the work of forensic experts carrying out excavations. In 2019, 252 biological reference samples for 152 missing persons, as well as 52 *ante mortem* data questionnaires, were collected. In the same year, 49 potential burial sites were examined, and 49 human remains were sent to a laboratory to be analysed. A total of 130 families attended eight information sessions conducted by the ICRC. Mental health and psychosocial support were also provided. A number of NGOs attended two training sessions and two meetings to strengthen their capacity on family accompaniment (ICRC 2019).

The bipartite coordination mechanism seems to have had positive results. The Office of the State Minister of Georgia for Reconciliation and Civic Equality reports that since the creation of the mechanism, 486 human remains from 178 gravesites have been recovered throughout the region; 163 of the 486 were identified and handed over to their loved ones. The process to identify the rest of the human remains continues. They also reported that the human remains of 22 persons missing as a result of the armed conflicts of 1992–1993 and 2008 had been identified and handed over to their families in April 2018 (Georgia, The Office of the State Minister of Georgia for Reconciliation and Civic Equality 2019).

The next process was the establishment by Georgian government decree, in 2019, of an inter-agency commission to search for missing persons: the Inter-Agency Commission on the Search for and Reburial of Missing People from Armed Conflicts. The Commission is supervised by the Office of the State Minister of Georgia for Reconciliation and Civic Equality and was established on 24 October 2019. The Office of the State Minister notes that the “interagency

commission is structured in a way that all relevant institutions act in a coordinated, effective and sustainable manner to clarify the fate and whereabouts of missing persons” (Georgia, The Office of the State Minister of Georgia for Reconciliation and Civic Equality 2019).

The Inter-Agency Commission on the Search for and Reburial of Missing People from Armed Conflicts is a coordinating body, involving different governmental institutions, including the State Minister for Reconciliation and Civic Equality (who is the Chairman of the Commission), the Senior Advisor to the State Minister for Reconciliation and Civic Equality, the Deputy Head of Administration of the Government of Georgia, the Deputy Minister of Internal Affairs, the First Deputy Minister of Defence of Georgia, the Deputy Minister of Justice of Georgia, the Deputy Minister of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, the Deputy Minister of Foreign Affairs of Georgia, the Deputy Head of the State Security Service of Georgia, the Head of Levan Samkharauli National Forensics Bureau, the Director of the State Service of Veterans Affairs, and the Head of the Commission on Reconciliation and Civic Equality of the Office of the State Minister of Georgia for the Autonomous Republic of Abkhazia and the South Ossetian Autonomous District. NGOs and the ICRC are also involved. Not too much is known about the operations of the Commission. However, the Commission has the potential to be instrumental in ensuring the efficient coordination of the process for searching and identifying missing persons. It needs to be reformed and become more open and transparent. Victims needs to be catered for more and they need to be more involved (Sarkin 2021c).

The Law on Missing Persons in Georgia

There are various pieces of legislation pertaining to missing persons in Georgian law. These include the Civil Code, the Code of Civil Procedure, the Criminal Code, the Code of Criminal Procedure, as well as several other laws, presidential and governmental ordinances, resolutions, and decrees. In fact, because there are so many different applicable laws, and because there are questions as to whether they comply with international law, the ICRC has been conducting a study on those questions. Regardless, the critical issue is that the laws concerning the missing in Georgia are scattered, incomplete and need updating. They do not deal with all the circumstances of missing persons, even in the context of armed conflict, never mind all the other circumstances in which people go missing.

The Civil Code

To touch on some of the legal provisions, Articles 21, 22 and 23 of the Civil Code of Georgia (Georgia, Civil Code of Georgia 1997) deal with declaring a person missing, declaring a person dead, and the effects of the reappearance of a person declared dead. As far as declaring a person missing, a court may declare a natural person missing if his/her whereabouts are unknown for two years. To have a person declared deceased, a court may do so if their whereabouts are unknown for five years, but the period may be shortened if there was an “unfortunate accident”, and no information has been obtained for six months. The law does however provide that a person who went missing because of conflict may be declared dead by a court “not earlier than two years after the day on which the wartime operations ended” (Georgia, Civil Code of Georgia 1997, Article 22.2). The problem with these provisions is that families do not always want to go to court and get their missing relative declared dead. In those circumstances, they face problems relating to various rights, such as property rights, the right to inheritance, etc (Sarkin 2017b). These provisions should therefore be made easier for families to use, and the time limits revisited as the time periods are too long for the families to wait. It may also be possible for some declaration to be done administratively, which can then be simply approved by a court, when it comes to changing a person’s status and dealing with inheritance, marriage, or other specific legal changes.

The Criminal Code

At present, Articles 411, 412 and 413 of the Georgian Criminal Code deal with various breaches of international humanitarian law. However, while these provisions cover some issues relating to missing persons, much more is needed as there is insufficient attention to preventing humanitarian law violations and criminalising their occurrence. Thus, the Code ought to be revised to include more humanitarian law crimes. The procedures to deal with these crimes also need to be set out in a law, as this is a crucial aspect of dealing with such cases. Often there are jurisdictional fights between competing governing agencies, as well as doubts as to how such processes ought to be pursued.

Reforming the law

Domestically, much still needs to be done in Georgia to reform the law to have an adequate legal framework to deal with missing persons. In this regard, already in 2007, in Resolution no. 1553, the Parliamentary Assembly of the Council of Europe called on all parties to “provide for an appropriate domestic legal framework to clarify the legal status to guarantee the interests of all missing persons and to provide for appropriate legal and administrative measures to meet the legal and material needs of family members and dependents, covering such matters as the custody of

the children of missing persons, inheritance rights, remarriage rights, pension rights and entitlements to public assistance” (Parliamentary Assembly 2007, Article 11.4). This is still not the case. Today, there is no composite and complete law on the missing, including how to deal with them and to prevent such cases in the future.

There is therefore a need to provide a comprehensive law, possibly modelled on the laws that have been created for other countries, to provide a much better overall set of practices to deal with missing persons in all aspects.⁴ Many other countries provide for the establishment of a National Information Bureau of Missing Persons or a similar named institution to focus on the needs of missing persons and their families. This would be a good idea for Georgia as well.

A law on the missing also needs to have a forward-looking focus, to prevent future missing persons. Thus, a variety of measures should be built into the law including the promoting the use of identity documents and identification dog tags as well as the preparation of proper medical records for all soldiers before conflicts begin, as well as the creation of proper registers. There is also a need to set up an office to deal with missing persons, processes that promote communication, human remains management, processes that set out techniques for the evacuation of the wounded and processes to ensure that the deceased after a conflict to ensure that they are properly buried and document the cases. Critically, the law should not only focus on those who go missing because of conflict but also deal with other types of missing, including those who cannot be found for a range of other reasons, including migration.

Conclusion and Recommendations

While a lot has been done to deal with missing persons in Georgia, there is still much more to do. The number of all conflict-related missing persons from all sides concerning Georgia in 2021 is still 2,891. Processes to find ways to end the conflicts and achieve reconciliation (Sarkin 2021b) between the people in the affected territories need to be established (Jasutis 2013). While there has been cooperation between all the parties (Georgia, South Ossetia, Abkhazia, and Russia), to some extent to find those missing, doing so is becoming more difficult as time passes and memory fades. In the future it will become even more difficult to find gravesites. Thus, steps ought to be taken to move such processes forward.

As of 2021, the law in Georgia still does not really deal with the missing. There are some provisions in the law that can be applied to missing persons, but they are far from complete and

⁴ See for example Bosnia-Herzegovina in Sarkin et al. 2014.

far from covering the full spectrum of issues that a law on the missing should cover. Therefore, a composite law on the missing ought to be drafted.

The demarcation of the present contested geographic boundaries between all the parties has restricted the movement of the families of the missing, making it difficult for them to go and visit places where their loved ones are or are supposed to have been buried. Greater access to all such places should be allowed for humanitarian purposes. This is an ongoing obstacle that was mentioned by several families during the research that led to this article.

At present in Georgia, inadequate support is provided to the families. The law is currently unclear about what is available, and it is difficult to determine what is provided and who is receiving what. As touched on above, Families' Needs Assessments ought to be conducted, without distinction as to whether a military or non-military missing person is concerned, to ensure that adequate support is provided to the families of the missing.

An Office of Missing Persons ought to be established to be a one-stop shop for families to be able to have their cases and their emotional, economic, legal, administrative, and other needs dealt with.⁵ Such an Office of Missing Persons should be well resourced and staffed with skilled and compassionate people. It should deal with all issues involved with missing persons and have input into all processes dealing with these matters.

Providing ongoing, regular training to the military on issues of the missing is crucial. Disciplinary codes and procedures need to be reviewed to ensure that they work in practice.

Much more must be done to recognise and respect those who have gone missing and their families (Sarkin 2022). It is useful that, for example, the "Heroes Memorial" in Heroes Square in Tbilisi honours all those who died protecting Georgia. (Rusetsky and Dorokhina 2020). More such remembrance sites ought to be built, with the involvement of the families and other civil society actors with an interest in such matters. This can help to indicate state support and compassion towards the victims but also give a space to the victims and for them to be acknowledged (Sarkin 2017a).

The International Day of the Disappeared, which is recognised on August 30 each year around the world (Sarkin 2013), ought to be a day of remembrance in Georgia as well. It should be a day to draw attention to the fate of the missing (but not only conflicted related but all types of missing persons) (Sarkin 2015), to pay tribute and respect to such individuals, to support their families and to raise public awareness about these matters. Beyond this, events should be held across Georgia to raise awareness of the issues concerning the missing.

⁵ See for example models in Pablo Baraybar, Brasey, and Zadel 2007.

Thus, as can be seen, much needs to be done in Georgia to reform the law and the practice on dealing with missing persons. It needs to ensure that its laws and practice can, in the future, prevent more people going missing, and to deal with cases of people going missing. Thus, Georgia should do this not only seek to enhance its standing in the international community but also because the needs of the country and the needs of victims expect this to occur. The international processes, that have oversight over Georgia, should however also play a role as well, to ensure that Georgia does much more to deal with the issues (Sarkin 2021a)

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