



**28th International Conference
of the Red Cross and Red Crescent**
2-6 December 2003

THE MISSING AND THEIR FAMILIES

**Action to resolve the problem of people unaccounted for
as a result of armed conflict or internal violence
and to assist their families**

**Report prepared by
the International Committee of the Red Cross**

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Overview

The ICRC held a conference from 19 to 21 February 2003 entitled *The Missing - Action to resolve the problem of people unaccounted for as a result of armed conflict or internal violence and to assist their families*. The aim of this report is to inform participants at the 28th International Conference regarding the main results of the conference held in February.

The report contains the following:

1. Introduction – Excerpt of the *Summary of the Conclusions arising from Events held prior to the International Conference of Governmental and Non-Governmental Experts* (19-21 February 2003) – **pages 2 to 4**.
2. Report by the Chairman of the Working Group on the *Observations and Recommendations to the Plenary meeting of the International Conference of Governmental and Non-Governmental Experts*, Mr Nicolas Michel, Director, Directorate of Public International Law, Federal Department of Foreign Affairs, Switzerland – **pages 5 to 7**.
3. *Observations and Recommendations*, adopted by Consensus on 21 February 2003 by the International Conference of Governmental and Non-Governmental Experts – **pages 8 to 11**.

At the 28th International Conference, participants will also receive a full version of the *Summary of the Conclusions arising from Events held prior to the International Conference of Governmental and Non-Governmental Experts*

These documents are intended to raise awareness among conference participants of the major implications in humanitarian terms of persons who go missing in connection with conflicts or violence and the effects on their families. They will also provide food for discussion – primarily during discussions in the commissions and the Drafting Committee – under the section of the Agenda for Humanitarian Action devoted to this issue.



1. INTRODUCTION

Excerpt of the *Summary of the Conclusions arising from Events held prior to the International Conference of Governmental and Non-Governmental Experts (19-21 February 2003)*

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Mission statement

The aim is to heighten awareness among governments, the military, international and national organizations – including the worldwide Red Cross and Red Crescent network – and the general public about the tragedy of people unaccounted for as a result of armed conflict or internal violence and about the anguish of their families

by creating and making available tools for action and communication

in order to ensure accountability on the part of the authorities responsible for resolving the problem of missing people, to better assist the families and to prevent further disappearances.

Uncertainty about the fate of their relatives is a harsh reality for countless families in armed conflict¹ and internal violence². All around the world, parents, siblings, spouses and children are desperately trying to find lost relatives. Families and communities, not knowing whether their members are alive or dead, are unable to obtain closure on the violent events that have disrupted their lives. Their anxiety remains with them for years after the fighting has subsided and peace returned. They are unable to move on to personal or community rehabilitation and reconciliation. Future generations carry with them the resentment caused by the humiliation and injustice suffered by their relatives and neighbours. Such festering wounds can rot the fabric of society and undermine relations between persons, groups and nations for decades after the actual events.

The relevant State authorities, armed groups and leaders must therefore take action, backed by national and international humanitarian and human rights organizations, to prevent people from going missing and to deal with the consequences when they do. For this, they can choose from a broad spectrum of measures involving persuasion, substitution, denunciation and judicial action. Whenever possible, constructive dialogue must be fostered between all parties - including the families of missing persons and their communities. This is the only means of reducing the number of missing persons and of identifying appropriate measures to be taken in their favour and that of their relatives.

¹ International and/or non-international armed conflict(s) - As defined in the Geneva Conventions of 12 August 1949 and their two Additional Protocols of 1977.

² Internal disturbances (internal strife) and situations requiring a specifically neutral and independent institution and intermediary - In conformity with the *Statutes of the International Red Cross and Red Crescent Movement*, article 5(2)(d) and 5(3), adopted by the Twenty-fifth International Conference of the Red Cross at Geneva in October 1986 and amended by the Twenty-sixth International Conference of the Red Cross and Red Crescent at Geneva in December 1995.

The primary need inevitably cited by the families of missing persons is the right to know what happened to their relatives.

Furthermore, experience shows that the missing person was often the family breadwinner and bore responsibility for administering the family's affairs in the public realm. Hence, while every effort must be made to ascertain the fate of people who are unaccounted for, their relatives must at the same time be provided with the means of living without shame.

The families and communities attach equal importance to the perpetrators of crimes being held accountable for their acts.

At the very least, when all else fails and it proves impossible to account for those who have disappeared in the course of armed conflict or internal violence, for the sake of the families and communities the loss of human lives must be acknowledged and the next-of-kin allowed to honour the memory of the missing in a dignified manner.

In accordance with the mandate conferred on it by the community of States, the ICRC's objectives in armed conflict and internal violence include to ensure that people are protected against threats to their lives, physical integrity and dignity, to prevent disappearances, to restore family ties, and to ascertain the fate of people whose families are without news of them. In most places, however, the ICRC is prevented from fulfilling these objectives by a lack of will on the part of the authorities or the parties concerned. Other governmental and non-governmental organizations working to prevent disappearances, to promote international humanitarian law and international human rights law and to trace missing persons face similar obstacles.

In cooperation with government representatives, other components of the International Red Cross and Red Crescent Movement, international, regional and national governmental and non-governmental organizations, representatives of families of missing persons and a variety of experts, the ICRC therefore launched a process aimed at addressing the plight of people who are unaccounted for as a result of armed conflict or internal violence and of their relatives.

The ICRC's objectives in launching this process in cooperation with all those involved in dealing with the issue are to:

- (a) review all methods of preventing persons from becoming unaccounted for in armed conflict or internal violence and of responding to the needs of families that have lost contact with their relatives;
- (b) agree on common and complementary recommendations and operational practices with all those working to prevent persons from becoming unaccounted for and to respond appropriately when people are missing as a result of armed conflict or internal violence;
- (c) heighten concern about the issue among State authorities, the United Nations and non-governmental organizations.

The ICRC decided to carry out this process in two initial stages.

The first, which took place between February and mid-December 2002, included three studies entrusted to research institutes, two electronic workshops and six workshops for governmental and non-governmental experts.

These events covered the traditional practices and activities of protection work and restoring family links, the management of human remains, support for the families of missing persons, the collection and management of personal data, and mechanisms for handling cases of missing persons. For each topic, needs and how to meet them were pinpointed, constraints identified, and recommendations and best practices produced. Approximately 120 experts contributed in one way or another to these events. A report is available on each one³.

³ List of reports:

For the second stage of the process, the ICRC has convened governmental and non-governmental experts to an international conference that will take place from 19 to 21 February 2003 in Geneva.

The objective of this report is to summarize for the conference the results of the events that took place during the first stage of the process. The report was drawn up under the ICRC's responsibility in two phases, the experts who took part in the first stage of the process having been invited to comment on an initial draft version in October and November 2002. Except for chapter XII, the present report does not necessarily represent the ICRC position.

The ICRC wishes to express its deep appreciation to all those who took part in the process. This report could not have been drafted without the wealth of experience they contributed and without their commitment.

The ICRC hopes that this report and the conference outcome will be of direct use to:

- a) all the governmental, humanitarian and human rights players engaged in field work in connection with armed conflict or internal violence;
- b) the governments involved in developing international law and preventing or resolving conflicts.

The ICRC will do all in its power to ensure that the outcome of the conference is put into practice for the benefit of missing persons and their families.

"The legal protection of personal data & human remains, Electronic Workshop, 02.04.2002 - 06.05.2002: Final report and outcome" (ICRC/TheMissing/07.2002/EN/1)

"Member of armed forces and armed groups: identification, family news, killed in action, prevention, Workshop, 06.05.2002 - 07.05.2002, Ecogia ICRC Training Center - Geneva - Switzerland: Final report and outcome" (ICRC/TheMissing/08.2002/EN/2)

"Human remains & forensic sciences, Electronic Workshop, 02.2002 - 03.2002; Human remains: Law, politics & ethics, 23.05.2002 - 24.05.2002 and Human remains: management of remains and of information on the dead, 10.07.2002 - 12.07.2002, Workshops, Ecogia ICRC Training Center - Geneva - Switzerland: Final report and outcome" (ICRC/TheMissing/10.2002/EN/3)

"Support to families of people unaccounted for, Workshop, 10.06.2002 - 11.06.2002, Ecogia ICRC Training Center - Geneva - Switzerland: Final report and outcome" (ICRC/TheMissing/08.2002/EN/4)

"Means to prevent disappearances & to process missing cases, Workshop, 24.07.2002 - 26.07.2002, Ecogia ICRC Training Center - Geneva - Switzerland: Final report and outcome" (ICRC/TheMissing/10.2002/EN/5)

"Mechanisms to solve issues on people unaccounted for, Workshop, 19.09.2002 - 20.09.2002, Ecogia ICRC Training Center - Geneva - Switzerland: Final report and outcome" (ICRC/TheMissing/12.2002/EN/6)

"Mourning process & commemorations, Study - Report and recommendations, Drawn up under the direction of Yvan Droz, Doctor of Ethnology, associate professor at the Geneva Graduate Institute of Development Studies (IUED), In cooperation with Sylvain Froidevaux, Doctor in Social Sciences, commissioned by the IUED" (ICRC/TheMissing/10.2002/EN/7)

"Overcoming the tensions between family needs and judicial procedures - Study - Report and recommendations, by Ms Vasuki Nesiah, Senior Associate, International Center for Transitional Justice" (ICRC/TheMissing/09.2002/EN/8)

"Study on existing mechanisms to clarify the fate of people unaccounted for - Report and recommendations, by Jean-François Rioux, Professor of conflict studies at Saint-Paul University, Ottawa, Canada and Marco Sassòli, Professor of public international law at the Université du Québec à Montréal, Canada; with the assistance of Mr. Mountaga Diagne and Ms. Marianne Reux, research assistants at the Université du Québec à Montréal" (ICRC/TheMissing/01.2003/EN/9)

2. REPORT TO THE PLENARY BY THE CHAIRMAN OF THE WORKING GROUP ON THE *OBSERVATIONS AND RECOMMENDATIONS*

Report by Mr Nicolas Michel, Director, Directorate of Public International Law, Federal Department of Foreign Affairs, Switzerland, Chairman of the Working Group of the International Conference of Governmental and Non-Governmental Experts (19-21 February 2003)

The objective of the Working Group was to have an overview of the *Observations and Recommendations*¹, to share considerations on this document's relationship to the process launched by the ICRC on *The Missing*, and to comment upon and clarify its text. The Working Group was not intended to be a forum for negotiations, nor the *Observations and Recommendations* to be a legally binding document. There was a common understanding that the *Observations and Recommendations* should not be interpreted in anyway as undermining existing legal standards. The *Observations and Recommendations* should be seen as an operational tool containing practical measures.

As it was understood that the *Observations and Recommendations* were to be adopted by consensus, additional comments and proposals on this text had to be presented in a separate but related document. These comments and proposals are presented in this Report, which is part of the official Acts of the Conference. The *Observations and Recommendations* are to be read together with this Report.

The Working Group was open to all Conference participants and was well attended. As the Chairman of the Working Group, my role was enormously facilitated by the positive and constructive atmosphere prevailing during our work.

The substantive work of the Working Group began with a presentation demonstrating the links between the contents of the *Observations and Recommendations* and the *ICRC Report: The Missing and Their Families – Summary of the Conclusions arising from Events held prior to the International Conference of Governmental and Non-governmental Experts (19-21 February 2003)*². The Working Group then proceeded to discuss each section of the text in order to obtain clarifications and exchange views. I will do my best to reflect the main points.

Many participants expressed their gratitude for the work done by the governmental and non-governmental experts as well as by the ICRC in the preparation of the text and for the text's added value, which will stimulate all actors in better understanding and implementing the full spectrum of operational best practices related to the problem of persons unaccounted for. It was repeated that the *Observations and Recommendations* should be seen as a focal point for future practical action.

¹ TheMissing/Conf/02.2003/EN/1

² ICRC/TheMissing/01.2003/EN/10

During the discussion, it was recalled that the term "missing persons" should be understood in its broadest sense. Missing persons or persons unaccounted for are those whose families are without news of them and/or are reported missing on the basis of reliable information. People become unaccounted for due to a wide variety of circumstances, such as displacement, whether as an internally displaced person or a refugee, being killed in action during an armed conflict, or forcibly or involuntarily disappearing. Particular attention was drawn to the vulnerability of children, and it was said that, in addition to the term "unaccompanied children" used in the text, reference to the term "separated children" should also be made. Regardless of the circumstances for which a person becomes unaccounted for, the families need to know the fate of their relative. However, different approaches are needed to handle the varied circumstances.

Because of the reference to armed conflict and internal violence in the text, several participants raised the question whether all persons unaccounted for are covered by the *Observations and Recommendations*. Armed conflict and internal violence take place in a large number of contexts in the world today, and most circumstances in which persons become unaccounted for occur in these situations. Nevertheless, it was emphasized that the work of the experts in this process on *The Missing* may, in fact, be used in efforts concerning persons missing in all situations, if appropriate.

The need to recognize the universal right to know was strongly advocated. Numerous participants affirmed its existence and customary character; others specifically referred to regional and domestic jurisprudence on the right to know. It was also affirmed that the right to know can, in addition to the specific reference in Art. 32 of the First Additional Protocol of 1977 applicable in international armed conflicts, be deduced from the Geneva Conventions' general obligations to provide information on detainees and internees, thus, demonstrating the existence of the families' right to know. In addition, the right to know was compared with other rights, such as the right to health, as not being obligations of result. This means that in the face of proven impossibility to provide information, there could be no violation of the right to know. These delegations were in favour of introducing stronger language on the right to know. However, other participants made the reminder that the Working Group was discussing a consensus-orientated text in a forum with inherent limitations, as there are representatives of States, inter-governmental organisations and non-governmental organisations as well as independent experts involved. These participants expressed the view that not all agree that there is a universal right to know; they mentioned that not all States adhere to the First Additional Protocol of 1977 and some debate the customary character of this right.

Some participants spoke of the essential role played by National Societies of the Red Cross and Red Crescent in the clarification of the fate of missing persons by the reestablishment of family links (RFL) and through tracing programs. Addressing the problem of *The Missing* at the International Conference of the Red Cross and Red Crescent to be held in Geneva in December, 2003, will further stress this issue's importance and facilitate coordinated action.

When referring to preventive measures, the need for *effective* protection was emphasized. When discussing internationally recognized standards on the deprivation of liberty, it was recalled that the right to access to justice, including *habeas corpus*, must be respected in all circumstances. In addition, as the text makes specific mention of international humanitarian and human rights law, it was suggested to also refer to refugee law.

It was further said that preventive measures must and can indeed be taken by armed groups. Unless armed groups are included in the solutions, the problem of missing persons will be far from adequately addressed. Obligations foreseen by international humanitarian law applicable in non-international armed conflicts are equally addressed to States and armed

groups taking part in the conflict. Practical means, taking into account the specificities of armed groups, should be explored and developed, including in cooperation with these groups.

Regarding the clarification of the fate of persons unaccounted for, it was repeated that clarification entails fully elucidating the fate, including the whereabouts and, if dead, the cause of death. In order to maximize the effectiveness in clarifying the fate of persons unaccounted for, the proper handling of personal information is essential. It was highlighted that the information collected be used only for the humanitarian purpose for which it was collected, so as not to once again sacrifice the dignity of the persons concerned. The need for special safeguards on personal data and the need to respect the relevant standards and principles on the protection of personal data were stressed. It was also stated that information must be properly preserved for historical and research purposes.

While recognizing that information on the fate of a missing relative is essential for the family, several participants made the reminder that the other needs of the families must not be ignored. For example, if the missing family member is dead, the swift return of the human remains is fundamental to many families in order for them to complete the mourning process. The needs of the families for acknowledgement and accountability were referred to. With respect to accountability, it was clarified that in the text "government authorities" includes the judiciary.

Despite the fact that many participants would have preferred the use of stronger language, the *Observations and Recommendations* will nourish this process on resolving the problem of people unaccounted for as a result of armed conflict and internal violence and to assist their families. This process is complementary to others. As an example, specific reference was made to the *UN inter-sessional open-ended working group on a draft legally binding normative instrument for the protection of all persons from enforced disappearances*.

Certain participants referred to the lack of resources as a main reason for not correctly dealing with the issue of missing persons. For instance, without adequate resources the often very expensive methods necessary to identify the dead are not used, nor are means of personal identification easily available.

Finally, it has been reaffirmed that the issue of missing persons and their families must be appropriately addressed. Further social stigmatisation of families of missing persons will thus be avoided. Those responsible can no longer ignore missing persons or their families.

Geneva, February 2003

3. OBSERVATIONS AND RECOMMENDATIONS

Observations and Recommendations, adopted by Consensus on 21 February 2003 by the International Conference of Governmental and Non-Governmental Experts (19-21 February 2003)

The participants in this Conference

- (I.) *Appreciating and drawing upon* the process launched by the International Committee of the Red Cross (ICRC) on the "Missing and their Families" and recognising the importance of exploring, and heightening international awareness of, the problem of people unaccounted for as a result of armed conflict or internal violence⁴,
- (II.) *Recognising* that uncertainty about the fate of their family members is a harsh reality for countless families, including relatives and close friends, which are thus themselves victims of the situation,
- (III.) *Recognising* that until they know whether their family members are alive or dead, families are unable to gain closure on the violent events that disrupted their lives and to move on to personal or community rehabilitation and reconciliation,
- (IV.) *Alarmed* that the resentment caused by the humiliation and suffering of families and neighbours often undermines relations between communities for future generations,
- (V.) *Aware* that preventing persons from becoming unaccounted for and addressing the consequences when they occur are complex tasks that involve numerous actors and require coordination,
- (VI.) *Having regard* to the relevant international instruments and standards of international humanitarian and human rights law and aware that the United Nations and the International Conferences of the Red Cross and Red Crescent have addressed this topic and continue to do so,
- (VII.) *Convinced* of the need to take action to prevent persons from becoming unaccounted for, to ascertain their fate, to assist their families and to hold accountable those responsible for events leading to persons becoming unaccounted for,

Make the following observations and recommendations and encourage their dissemination and application:

1. It is essential to protect all persons from becoming unaccounted for, without distinction as to the deliberate or incidental character of the events leading to the persons becoming unaccounted for.

⁴ For the purpose of these Observations and Recommendations, **internal violence** means internal disturbances (internal strife) and situations requiring a specifically neutral and independent institution and intermediary in conformity with the *Statutes of the International Red Cross and Red Crescent Movement*, article 5(2)(d) and 5(3), adopted by the Twenty-fifth International Conference of the Red Cross at Geneva in October 1986 and amended by the Twenty-sixth International Conference of the Red Cross and Red Crescent at Geneva in December 1995.

2. It is essential that families are allowed to know the fate, including the whereabouts and, if dead, the cause of death, of their family members who are unaccounted for.
3. The principal responsibility in preventing all persons from becoming unaccounted for and in ascertaining the fate of all those unaccounted for as soon as reported missing lies with government authorities; armed groups also have a responsibility in this regard.
4. Inter-governmental organisations and the ICRC, acting in conformity with their respective mandates, should be available to support government authorities and armed groups in fulfilling their responsibilities, and, when they cannot or will not meet their responsibilities, inter-governmental organisations and the ICRC should act accordingly.
5. Non-governmental organisations, acting in accordance with their own mandates, should maximize efforts to prevent persons from becoming unaccounted for and to clarify the fate of those who have become unaccounted for.
6. It is essential that all those involved respect each individual's inherent human dignity in all circumstances.
7. Every effort should be made to respect the cultural, social and religious or spiritual context specific to each situation.

8. **Prevention**

Respect for international humanitarian and human rights law is fundamental in preventing persons from becoming unaccounted for. It is important that full implementation by States Parties and dissemination of these obligations be ensured. Preventive measures that can be taken include:

- 8.1 providing means of personal identification to all members of the armed forces and armed groups;
- 8.2 making means of personal identification easily available to all concerned persons;
- 8.3 respecting internationally recognised standards regarding the deprivation of liberty, providing immediate notification to families, counsel or other persons having a legitimate interest in the detained persons and preventing extra-judicial executions, torture and detention in secret locations;
- 8.4 ensuring that family members wherever they may be, including members of armed forces or armed groups and their family members, can communicate with each other at regular intervals;
- 8.5 accountability, including fighting impunity.

9. **Clarification of the fate of persons unaccounted for**

It is crucial that families receive information on the individual fate of their unaccounted for family members. The families and communities also need both acknowledgment of the events leading to persons becoming unaccounted for and perpetrators held accountable. Measures that can be taken include:

- 9.1 government authorities and armed groups enabling independent investigations to be carried out to clarify the fate of persons unaccounted for and to provide information;
- 9.2 avoiding obstruction of, interference with or impediments to the clarification of the fate of persons unaccounted for;
- 9.3 setting up, whenever necessary, complementary mechanisms, judicial or non-judicial, to respond to the families' needs;
- 9.4 addressing issues related to reparation;
- 9.5 providing to the family, in accordance to judicial guarantees and procedures and privacy rights, information collected during criminal investigations that sheds light on the fate of a person unaccounted for.

10. Information management and the processing of files on persons unaccounted for

Coordination of the activities of all those involved and sharing information will heighten the effectiveness of the action taken to ascertain the fate of persons unaccounted for. Measures that can be taken include:

- 10.1 ensuring that the information collected on persons unaccounted for be comprehensive, yet limited to that which is necessary for the purpose identified and is impartially collected and processed;
- 10.2 sharing information on the methods and objectives of the data collection and processing procedures by those involved;
- 10.3 exchanging between those involved the information collected in a manner consistent with point 10.5 and without endangering victims, the persons collecting the information or the sources of the information;
- 10.4 centralising the information collected to increase the possibilities of informing the families about the fate of their members, in particular by:
 - A. at the latest at the outbreak of an armed conflict, setting up an Information Bureau to collect and transmit information;
 - B. forwarding to a neutral, impartial and independent humanitarian organisation, such as the ICRC, personal information that may serve to ascertain the fate of persons unaccounted for;
- 10.5 respecting the relevant standards and principles on the protection of personal information whenever information, including medical and genetic information, is managed and processed.

11. Management of human remains and of information on the dead

The principle responsibility in the proper handling of all the dead without adverse distinction and in providing information to the families with a view to preventing anxiety and uncertainty lies with government authorities and armed groups. Measures that can be taken include:

- 11.1 ensuring that all feasible measures are taken to identify the human remains of those who died and to record their identity;
- 11.2 avoiding obstruction of, interference with or impediments to the identification of human remains;
- 11.3 issuing death certificates;
- 11.4 ensuring that all those involved respect the legal rules and professional ethics applicable to the management, exhumation and identification of human remains;
- 11.5 ensuring that forensic specialists, whenever possible, carry out the procedures to exhume and identify human remains;
- 11.6 ensuring adequate training to all persons collecting information on the dead and handling human remains;
- 11.7 beginning a process of exhumation and identification only once a framework has been agreed upon by all those concerned and ensuring that the framework includes:
 - A. the establishment of protocols for exhumation, *ante mortem* data collection, autopsies and identification based on scientifically valid and reliable methods and technologies and/or customary, clinical or circumstantial evidence that are deemed appropriate and which have been previously adopted by the scientific community;
 - B. appropriate means of associating the communities and the families in the exhumation, autopsy and identification procedures;
 - C. procedures for handing over the human remains to the family;
- 11.8 respecting and developing professional ethics and standards of practice for forensic specialists working in international contexts.

12. Support for the families

The material, financial, psychological and legal needs faced by families awaiting clarification of their family members' fate should be addressed by the concerned authorities, when necessary with the support of inter-governmental and non-governmental organisations as well as of the ICRC. Measures that can be taken include:

- 12.1 providing targeted assistance with the aim, as soon as circumstances allow, of promoting the families' self-sufficiency;
- 12.2 addressing the legal situation of persons unaccounted for and the consequences for family members, including in terms of property administration, guardianship and parental authority;
- 12.3 ensuring children special support and protection, and in particular taking measures to reunite unaccompanied children with their families;
- 12.4 ensuring that the needs of single heads of families be the object of special attention, taking into consideration the specific needs faced by women in such situations;
- 12.5 ensuring that the families of persons unaccounted for benefit from support programmes in order to adapt to their altered situations and come to terms with the events; psychological support, and whenever necessary and feasible psychiatric treatment, should be provided to those in need; all programmes should be built, as much as possible, on the local health and healing systems;
- 12.6 encouraging family networks and associations, which can provide a forum for mutual support.

13. Families and mourning

Respect for the dead and for local funeral rites supports peace and social order. The process by which the families are informed that a family member has died and human remains and/or personal effects are returned needs to be well prepared. In addition:

- 13.1 the dead and the mourning practices of individuals and communities concerned need to be respected in all circumstances;
 - 13.2 commemorations, the planning and organisation of which should be left to the families and communities concerned, need to be supported.
-