

CHAPTER 6: LEGAL ASPECTS

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The inability to identify human remains has important economic and moral consequences for the families of the deceased and ultimately, for the State. It is especially harmful when procedures that are generally sanctioned in domestic law are disregarded, including: correct removal of remains; the preparation of identification files that can preserve at least a minimum of information about the deceased; and the final, individualized disposal of the remains, always maintaining the chain of custody. The failure to follow these procedures can generate State responsibility with regard to the relatives of the victims, as well as to others who have a legitimate interest in certifying a person's death.

INTRODUCTION

Death is an event that creates legal consequences with a profound effect on the life of the survivors, in emotional, economic, and familial aspects. Uncertainty about the survival of those who were at the site of a natural disaster is something that should and can be avoided through proper management of human remains.

The objective of this chapter is to describe existing legislation in the countries of the Region of the Americas about management of corpses and missing persons, and to point out the legal consequences of not identifying bodies. From the analysis of domestic and international legislation it can be concluded that it is a duty of the State to recover the corpses, to remove them correctly, to identify them, and, in the event that this is not possible, to collect the data necessary to accomplish identification in the future by preparing identification files. Moreover, religious and funeral rituals observed by the family of the deceased or by the community where an event occurs should be respected at all times. Corpses should be buried individually, and a detailed report should be maintained in the identification file indicating the exact location of the burial.

A model law for managing dead bodies, which addresses the above issues, is presented at the end of this chapter

GENERAL REGULATIONS ON MANAGING CORPSES

The civil codes of the Region define physical persons as entities who are able to acquire or hold rights and to contract obligations. Death puts an end to the person, and for this reason is an event of great importance that has fundamental legal and

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inheritance consequences.¹ Among these we should emphasize the transfer of possessions of the deceased to his or her heirs, and the dissolution of marriage with the consequence that the surviving spouse can remarry.

Given the importance of the death of a person as a legal event, States have regulated processes related to the confirmation of death, determination of the exact time of death, measures used to identify the decedent, establishment of causes and manner of the death, and documentation and proof of the same. Moreover, there are regulations on the processes of declaring the presumed death of people who are missing.

The documented proof of the death of a person is known as the death certificate. It is an instrument that contains the name of the victim, the age, sex, causes of death, hour and date of death, the name of the professional who established the diagnosis and signed the certificate, and the place and date that the certificate is issued.² Death certificates should be recorded in registries that maintain the vital statistics of the population. Thus, the death certificate and its registration are essential requirements for legal and inheritance processes to advance at the time of someone's death.

Unidentified Bodies

The appearance of unidentified bodies occurs regardless of whether or not there are emergencies or catastrophes, and for this reason they are taken into account in the law. In this regard, the countries of the Region have established norms for: removal of corpses, transfer to a morgue, identification, establishing the cause of death, and delivery of the corpse to family members or other arrangements in the event that no one claims them.³

When the existence of dead bodies is reported, authorities are interested in whether or not a crime has been committed.⁴ It is usually necessary to follow a series of regulations for removal of the body, which are generally described in the penal procedures codes. These usually include inspection of the site, a preliminary examination of the body, collection of possible evidence, and photographing the scene, among others. The purpose is to collect the greatest amount of potential evidence that can help determine the cause of death and establish the identity of the body.

The body is then sent to the morgue so that an autopsy can be performed. All of the legal provisions that we have analyzed concur that in the case of unidentified corpses (usually designated as “NN” or “John/Jane Doe”), morgue personnel should complete an identification file that includes the description of physical characteristics of the corpse such as approximate age, sex, and racial features, among others.

1 At death, one is no longer considered a person, that is, a subject of the law. Thus, cadavers are regarded, in general, as “things.” This classification might be deemed inappropriate since cadavers are not subject to common rules about possessions and property, and, for that reason, they are not a “thing” in the legal sense of the word. So despite their indefinite legal status which, on occasion prevents their protection in the framework of the law in force, human remains have been the object of normative protection, as will be discussed later in this chapter.

2 All countries of the Region have laws that address in detail the registration and issuance of death certificates. For example, Decree No. 722 of Nicaragua, published on 12 May 1981; the Lei dos Registros Públicos (Public Registry Law) No. 6.015/73 of Brazil; or the Ley del Registro Demográfico (Demographic Registry Law) No. 24 of Puerto Rico, published in 1931.

3 There are a variety of regulations that address this topic: health codes or regulations [for example, Law No. 26.842 of 1997, the Ley General de Salud (General Health Law) from Peru]; regulations that classify the departments of legal or forensic medicine; instructions that regulate the operation of morgues; codes for criminal proceedings (for example, in Colombia, Articles 290 and 291 of Law No. 600, published in 2000); or regulations for the forensic medical corps [for example, Código de Instrucción Médico Forense (Medical Forensic Instruction Code) of Venezuela].

4 For example, the Código Procesal Penal (Penal Procedure Code), Article 177, of Paraguay; the Código Procesal Penal, Articles 85-90, of Chile; and the Código Procesal Penal, Article 239, of Peru.

Photographs should be made, a dental chart prepared, fingerprints taken, tissue and other samples taken for DNA or other testing, and any other samples needed to proceed with future identification.

The corpses tend to remain in the morgue as long as the morgue has the capacity, or for a specified period of time, which varies depending on the regulations. The bodies are then buried either in individual or collective graves, but always maintaining certain spaces between the bodies in order to preserve the individuality of the dead. The exact site of the burial of each body should be adequately marked.

These procedures make it possible to establish what is usually called the “chain of custody” for the corpse, meaning the preservation of clear documentation relating the identification file created in the morgue and the exact site of burial, so that once identified, the corpse can be exhumed and delivered to family members.

Laws regulating the activity of cemeteries generally address burial or cremation of remains.⁵ In this regard, personnel in charge of the cemetery can only bury bodies from the morgue when there are certificates or documents, generally issued by health departments, which authorize the burial. Normally special sections of the cemetery are designated for the burial of unidentified corpses.

These standards also regulate the conditions in which it is possible to cremate or incinerate the bodies. The principle is that cremation of remains cannot take place when the cause of death has not been established; in the event that there is no doubt about the cause of death, cremation cannot be performed without the authorization of the relatives of the deceased. This last condition makes cremation of unidentified corpses impossible. The exception to this principle, according to legal texts, is when the dead body could cause the spread of disease, which is defined in some regulations as “pestilent or epidemic”⁶, although the majority of regulations refer generically to “cases in which the corpses make the spread of diseases possible.”⁷ Accordingly, this legal exclusion would not apply to the traumatic deaths presumed to be a consequence of natural disasters, since, as discussed in Chapter 3 of this manual (“Health Considerations”), dead bodies do not pose a major health threat in these conditions.

Missing Persons

Thus far we have analyzed provisions that apply to situations in which there exists a corpse and it may or may not be possible to identify it. In cases of a missing person, that is, when there has been no news of him or her for a certain period of time, regardless of the circumstances of the disappearance, the law has implemented a series of procedures used to resolve the uncertainty and legal consequences of the disappearance.

When a person disappears, family members are faced with an ambiguous and very complex situation which transcends the emotional aspects of the loss. In principle, no

5 By way of example we can mention the following: Decree No. 22.183-S of Costa Rica, published on 18 May 1973; Decree No. 1.537 of Nicaragua, published on 28 December 1984; Acuerdo Gubernamental (Governmental Resolution) No. 5 of Guatemala, published on 10 January 1996; Decreto Supremo (Supreme Decree) No. 03-94-SA of Peru, published on 12 October 1994; Resolución No. 27 of Paraguay, published on 3 January 1986; Reglamento de Cementerios del Distrito Federal de México (Cemetery Regulations of the Federal District of Mexico), published on 28 December 1984; the Health Service Act of the Bahamas, Chapter No. 215; the Revised Laws (1965) and Public Health Act of Belize, Chapter 31, Section III, Revised SL 1962.

6 Ordinance No. 27.590 of the city of Buenos Aires, published on 14 May 1973.

7 For example, Law No. 26.842, published in 1997 in Peru’s Ley General de Salud (General Health Law), Article 112, and others mentioned in footnote 5.

one can be considered dead until a death certificate is issued, which leads to major economic consequences. There are many cases of families who remain completely unprotected: they are unable to access family assets (banking accounts or pension funds, for example), they cannot receive property that is in the name of the missing person, or they are prevented from collecting life insurance or reparations. In addition, a significant number of people outside of the family can be affected by the disappearance, including business partners, debtors, and creditors, among others.

There have been legal ordinances to resolve such situations since ancient times. The civil codes of the Region, which, in general, date to the end of the nineteenth and beginning of the twentieth century, address the declaration of the presumption of death or declaration of presumed death.⁸ By providing for a declaration that the missing person is presumed dead, these instruments allow for the same legal processes as those affecting confirmed deaths.

In this regard, the family members and others who have a legitimate interest can make a legal request for a declaration of presumed death of the missing person under certain circumstances (for example, accidents or disappearance of boats or aircraft, earthquakes or other catastrophic events, or military actions or war). It is a legal requirement for a reasonable amount of time to elapse following the time of the event in order to avoid fraud. The process concludes with the declaration of presumed death of the missing person and the date of presumed death. The finding is usually entered into civil or personal registries so that the death is accredited for legal purposes. The codes also regulate matters relating to the reappearance of the person who is presumed dead.⁹

However, this process is long and expensive for the family. The waiting period that must elapse added to the time needed for the judicial process itself, means that the family of the victim must exist for an extended time without the income that the deceased provided and without receiving one's inheritance. In addition, professional fees must be paid to the lawyers involved, notices published in daily newspapers, and other expensive arrangements made.

In order to avoid the cumbersome processes described in the civil codes, and when there is an event that generates large numbers of victims in which survival is unlikely, the authorities have resorted to exceptional remedies, as described below.

In El Salvador, following the earthquake on 13 January 2001, the Legislative Assembly approved Decree No. 294 on 23 February 2002, sanctioning a special, temporary law in order to certify the deaths of those killed or missing because of the disaster. The regulation was enacted because authorities could not make legal identifications of a large number of people who were killed when buried in rubble, or whose whereabouts were unknown. The law was passed because of the difficulty of complying with standard legal procedures for establishing the status of missing persons.

8 For example, the Civil Code of Argentina, Articles 110 to 125; Civil Code of Bolivia, Articles 39 to 51; Civil Code of Brazil, Articles 6 to 10; Civil Code of Paraguay, Articles 63 to 72; and the Civil Code of Chile, Articles 80 to 94.

9 In general, if the person who is presumed dead reappears, his or her marriage contract is considered to be valid; but if the surviving spouse has entered into a new marriage, it is not annulled. The person is entitled to recover property that still exists in the condition in which it is found, and recover the net proceeds of missing property.

In the United States, an average of three years must elapse before obtaining a judicial ruling on the presumed death of a person who is missing due to accidents or catastrophic events. The City and State of New York adopted special procedures as a consequence of the terrorist attack of 11 September 2001 (Helping Handbook, 2001). The process took between one and two weeks from the time that the missing persons report was filed at the New York City Police Department by the closest relative of the missing person. The request had to be accompanied with a series of requirements such as proof of relationship, a sworn statement with detailed information about the missing family member, the basis for the belief that the missing person was at the World Trade Center on September 11, and other issues. In this case it was expressly stated that acquiring a death certificate would not affect the attempts being made to find survivors or to identify remains found at the World Trade Center.¹⁰

In other cases, civil code procedures have undergone continual modification to conform to the needs of the victims' relatives.

A landslide in the Mameyes district of the city of Ponce, Puerto Rico, occurred on 7 October 1985, resulting in the deaths of dozens of people whose bodies could never be recovered or identified. In response, Law No. 1, of 12 December 1985, was passed to establish special procedures for such situations. They are based on the preparation of an investigative action by the Public Ministry containing a census of the missing people on the day or days of a catastrophic event. The Public Ministry has 45 days to prepare the proceedings and present them to the corresponding court together with a petition declaring the deaths of the people included in the census. Once the ruling is made, the Secretary of Health issues corresponding death certificates for the people whose deaths are decreed by the court.

In Spain, Law No. 4 was approved in 2000; it modifies Civil Code statutes on the declaration of death of those missing in shipwrecks and disasters. The law shortens the time required before proceeding with a declaration of death in cases of imminent threat of death because of violence, shipwreck, disappearance of a ship, or aircraft disasters.

The above examples show that legal codes have attempted to resolve the problem of missing persons by resorting to a legal fiction: that is, presuming the deaths of persons who have disappeared in given circumstances. This, without a doubt, helps to solve many practical problems relating to legal and estate issues, but it should be made clear that these procedures cannot be used to replace or justify the ineffectiveness of the authorities with regard to proceeding in the identification of dead bodies. The special and temporary statutes that declare the missing as presumed dead because of a natural disaster should be used only when corpse recovery is impossible because

¹⁰ The text of the Helping Handbook can be viewed at: www/mofa.com/about/pbhandbook/handbook/about.htm.

of the nature of the disaster. The assets that are recovered because of these expedited procedures can never replace the certain identification of a body, which is the only thing that can put an end to the agony of family members with respect to the fates of their loved ones.

When recovery of dead bodies has been deemed impossible, in general because they were buried by landslides, building collapse, or other similar circumstances, the authorities have in some cases resorted to declaring the disaster zone “sacred ground,” frequently in response to the request of family members. We have not had access to the text of these pronouncements, so their exact scope is not clear. We should mention, however, that cemeteries are considered sacred places out of respect for the dead, and are intangible property in the sense that they are exempt from property claims, etc.

The declaration of “sacred ground” can be problematic in the sense that the site of the tragedy could be private property or subject to economic exploitation. Such a conflict arose in the mining camp of Chima, Bolivia, where in March 2003 a landslide buried some 20 houses and caused a high number of deaths. Because it was impossible to recover the bodies, the residents asked the authorities to declare the area “sacred ground.” This was met by immediate opposition from the cooperative in charge of the mining concession because, given the sacred nature of the site, gold mining there would have to end (Diario La Prensa, 3 April 2003, La Paz, Bolivia).

It should be emphasized, however, that identification should be the objective of the authorities, and that recovery of dead bodies is the basic premise of identification. Everything possible should be done to recover the bodies, following the criteria outlined in Chapter 2 (“Medicolegal Work in Disasters”), in order to preserve evidence that can help with identification. Only when all attempts at recovering the remains have been exhausted can the option of declaring the disaster site, where the corpses remain, as sacred ground. While this does not resolve the identification problem, it can help the grieving process and psychological recovery of families and the population at large by providing a place for honoring and remembering the dead.

IDENTIFICATION OF NUMEROUS CORPSES

From what has been discussed above, it is clear that the law has dealt with matters relative to corpse recovery, identification, and burial, but we have not found statutes for cases in which a large number of fatalities are presented as a consequence of natural disasters. The only reference in legal codes in this regard relates to resolving the legal status of missing persons in various circumstances, including natural disasters.

In principle, therefore, there would be no reason not to act in accordance with the domestic statutes mentioned above when natural events cause massive fatalities. This

involves recovery of the body, preparation of an identification file, individual burial of the corpse, and maintenance of the chain of custody that would permit potential exhumation at some point in the future.

This assumption does not imply that we can ignore what is involved in managing a large number of fatalities. In general, when a major natural disaster occurs, there is no doubt about the cause of death, and consequently no suspicion that a crime has been committed. This would seem to influence the fact that in the process of corpse removal at disaster sites, other elements at the scene are not preserved. Moreover, it is common to act quickly because of pressure exerted by relatives and, sometimes, because of unfounded beliefs about the health hazards presented by dead bodies. Nevertheless, the recovery of corpses and preservation of as much data as possible, considering the emergency circumstances and other priorities, should be performed with the greatest possible diligence. This facilitates the process of identification, and determining identity should be as important for the authorities as determining the causes of death.

We cannot ignore the fact that a major natural disaster can produce hundreds of fatalities that clearly overwhelm the infrastructure established for managing dead bodies in normal circumstances. However, we should emphasize that identification of corpses is a technical matter that can be carried out regardless of the number if the authorities follow procedures described in Chapter 2. The following section analyzes the legal consequences of procedures that prevent identification of corpses.

Because many types of resources are required when there are a large number of corpses to identify, it is necessary to lay the groundwork for effective collaboration among countries. This can be done using existing cooperation agreements regarding disasters, or more concretely through the system established by Interpol, which will be addressed later.

CONSEQUENCES OF FAILURE TO IDENTIFY CORPSES

The inability to identify human remains results in economic and moral injury to families of the victim. This is due to a lack of regard for the procedures generally sanctioned by domestic legislation regarding: (a) the proper removal of the corpses, (b) creation of identification files which, at least, preserve a minimum amount of information depending on circumstances of the emergency, and (c) individualized disposal of the corpse thereby maintaining the chain of custody. This failure can make the State responsible respect to the relatives of the victims and ultimately other persons with a legitimate interest in certification of the death.

Provisions of national law

Authorities have a fundamental interest in management of dead bodies, which is expressed by a series of obligations that are listed below:

- ◆ The State has the obligation to structure its civil defense in order to protect its citizens. So the State is responsible, through its authorities designated for emergency management, for disaster prevention and operations of rescue, relief, rehabilitation, and reconstruction. In this framework, priorities of the authorities immediately following a disaster event are: first, rescue and assistance for survivors; second, repair and maintenance of basic services; and finally, recovery and management of dead bodies.
- ◆ States have legislation and internal procedures regarding the identification and disposal of dead bodies. All the States have departments of legal or forensic medicine in charge of corpse identification and autopsy, and have custody of the bodies until they are transferred to the cemeteries.
- ◆ The State has a clear obligation to have health officers oversee everything relative to the operation of the cemeteries, burials, exhumations, and other related issues. Furthermore, it rules on the transfer of corpses within the country and internationally, which is carried out under strict control of health authorities. It is also the responsibility of the State to establish standards for, and control the registration and release of death certificates, and to organize and administer the population's civil registries in order to prevent fraud.
- ◆ The State upholds respect for the integrity of corpses through various regulations. The penal codes of the region sanction punishment for the desecration of graves, corpses, or ashes and, in some cases, the interruption of funerals and necrophilia.¹¹ Legal protection, which varies in different jurisdictions, considers crimes against religious freedom, against marital status, and even, as in the case of Puerto Rico, crimes against the respect due to the dead.
- ◆ In a similar vein, there are different standards in the Region about organ transplantation from donors. Several of them stipulate that the corpse of the donor should receive respectful and dignified treatment, and that the physical integrity of an unidentified corpse from which organs are removed should be respected.¹²
- ◆ The State has the duty to protect those fundamental human rights that are consecrated in the constitutions of countries, such as the rights to physical and moral integrity of individuals,¹³ religious freedom,¹⁴ and respect for the customs of indigenous peoples.¹⁵ These rights can be violated if the authorities in

11 For example, the Penal Code of Puerto Rico in the sections on crimes against respect of the dead and crimes against the family, and articles 140 and 141, describe the crimes of desecration of cadavers or ashes, the gravesite, or an interruption of the funeral. These crimes are defined in the Penal Code of Venezuela in articles 171-173 in the section on crimes against freedom of worship. Chapter V of the Penal Code of Nicaragua includes the desecration of graves and of cadavers among the crimes affecting civil status. The Penal Code of Uruguay, in articles 307 to 308 and in the section on crimes against freedom of worship, addresses the crimes of vilification of cadavers, ashes, graves, and urns, or theft of cadavers. The Penal Codes of various Mexican states punish the desecration of graves and acts of necrophilia (e.g., the States of Aguas Calientes and Baja California).

12 For example, Argentina's Law 24.193 of 1993, article 25; and Uruguay's Law 14.005, Article 8.

13 These rights are codified in Article 12 of the Constitution of Bolivia, Article 1 of the Constitution of Chile, Article 23 of the Constitution of Ecuador, Article 2 of the Constitution of Peru, Article 36 of the Constitution of Nicaragua, Article 4 of the Constitution of Paraguay, Article 8 of the Constitution of the Dominican Republic, and Article 46 of the Constitution of Venezuela. It is implicit in these codes that the right to physical integrity cannot be defined as the right to life, understood not as the right to existence but as the right not to suffer damages in any of its basic manifestations. For example, the Constitution of Colombia does not expressly sanction the right to physical integrity, but the Constitutional Court has ruled (Case T-584/98) that the right to life entails, by extension, the right to physical and moral integrity as well as the right to health.

14 Freedom of conscience and religion are expressed in: Article 3 of the Constitution of Bolivia, Article 19 of the Constitution of Chile, Articles 18 and 19 of the Constitution of Colombia, Article 23 of the Constitution of Ecuador, Article 2 of the Constitution of Peru, and Articles 59 and 61 of the Constitution of Venezuela.

15 Protection of the indigenous villages or communities is addressed by the countries of the Region through specific protective statutes.

charge of emergency management refuse to recover the corpses; remove it improperly; if they are careless when identifying them; or if they disregard religious rituals and cultural beliefs when burying the remains.

According to what has been outlined above, such actions can justify the right of family members or those persons with a legitimate interest in explanation of a disappearance, to pursue legal action for reparations of damages. The material injury results from the inability of family members or interested parties to access family assets, to collect insurance, and to take possession of the property of the deceased, which depends on lengthy processes for there to be a declaration of presumed death. The moral or psychological injury derives from several aspects explained in detail in Chapter 5 (“Psychological Aspects”), and is based on uncertainty about the actual death and the inability of relatives to bury their loved ones, which hinders and delays the grieving process.

With regard to burial of remains in common graves, it is worth stating that this makes the process of identification enormously difficult. It eventually becomes a much more expensive and complicated forensic anthropological task. Furthermore, these practices, including cremation of corpses, jeopardize social traditions about respect for the dead and tend to be in conflict with the religious rites and the cultural norms discussed in Chapter 4 (“Sociocultural Aspects”). This can result in psychological harm for the relatives and lead to legal proceedings and demand for reparations.

From the preventive standpoint, and in accordance with different legal codes, it would be possible to introduce simple denunciations or protective actions for the purpose of forcing the authorities to act appropriately when there is the potential for violation of fundamental rights firmly established in the constitutions of the States.

Following the accident involving a TANS Fokker F-28 aircraft that crashed into the Coloque mountain near the city of Chachapoyas, Peru, in January 2003, the relatives of the dead denounced the supposed “fraudulent and criminal” action of Air Force and other military personnel for hiding information about the real possibilities for recovering the remains of their family members. According to what relatives reported to the press, “they hid the facts and cynically lied about the logistical possibilities for air and land rescue of the bodies of the victims, besides denying that human remains were scattered in the area.” The denunciation was made after the government announced that corpse recovery was impossible because the bodies had disintegrated in the crash. Family members, who rented aircraft to fly over the area, confirmed the presence of human remains.¹⁶ This is a clear example of the pressure that family members can exert by using denunciations to compel authorities to act appropriately when managing corpses.

¹⁶ Press accounts taken from El Expreso, La República, Ojo, Liberación, Pura Verdad y la Razón, 17 January 2003 and from Diario La Razón, 18 January 2002.

Provisions of international law

There are international instruments that address the management of corpses. Although they have different characteristics and scope, they affirm the importance that the international community places on the recovery, identification, and burial of human remains in accordance with religious ritual and cultural beliefs. These documents address the treatment of human remains in different situations; for example, those who die in disasters (Interpol Guides), in armed conflicts (Geneva Conventions and other protocols), natural catastrophes (*Guiding Principles on Internal Displacement*), or aircraft accidents (ICAO Standards).

Guiding Principles on Internal Displacement

The *Guiding Principles on Internal Displacement* were prepared and presented in 1998 by the Representative of the Secretary-General of the United Nations on Internally Displaced Persons, Mr. Francis M. Deng, in response to the mandate of the United Nations General Assembly and the Commission of Human Rights to prepare a legal framework for the protection and assistance of internally displaced persons.

These principles are of fundamental importance to this topic because in defining internally displaced persons, they include “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of ... natural or human-made disasters, and who have not crossed an internationally recognized State border.”¹⁷

According to these principles, persons displaced by natural catastrophes have “the right to know the fate and whereabouts of missing relatives.” It also states: “The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result...The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully. ...Grave sites of internally displaced persons should be protected and respected in all circumstances.”¹⁸

Although the *Guiding Principles* do not constitute a binding legal document as such, they have achieved recognition and considerable prestige in a relatively short period of time and are distributed and promoted widely by the United Nations. Furthermore, to the extent that they contain a series of provisions that are codified in international human rights law, international humanitarian law, and the analogous rights of refugees, and have been ratified by most States of the Region, they are compulsory in character and should be implemented in good faith by States.¹⁹

17 *Guiding Principles on Internal Displacement*, Office of the High Commissioner on Human Rights, extract from Document E/CN.4/1998/53/Add.2, dated 11 February 1998. The text of the *Guiding Principles* can be viewed at: www.unhcr.ch/html/menu2/7/b/principles.htm.

18 *Ibid.*, Principle 16.

19 “Good faith” is an ethical and legal principle that seeks to ensure seriousness and compliance in obligations assumed through international treaties. It seeks to guarantee security and avoid deceit or pretense in international relations. It is based on compliance with the obligations freely entered into by nations, in accordance with international pacts or treaties (United Nations Charter, Article 2, Para. 2, and Vienna Convention, Article 26).

Interpol's *Disaster Victim Identification Guide*

The International Criminal Police Organization (Interpol) is an international agency with 181 Member States that include the majority of States in the Region of the Americas. Its objectives are defined in Article 2 of its Constitution, which are: “to ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the Universal Declaration of Human Rights; ...” and “to establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary law crimes.”²⁰

For several years, Interpol has sponsored a program of activities related to the identification of disaster victims; the objective of this program is to encourage the Member Countries to adopt a common policy in this field. For this purpose it prepared the *Disaster Victim Identification Guide* (referred to here as the “Guide”), published for the first time in 1984 as a result of the work of the Standing Committee on Disaster Victim Identification, which has met annually since 1993 in order to update procedures that are used in this field.²¹

The Guide includes recommendations for Member States that emphasize the importance of planning and training for identification of human remains. Its preparation was based on practical experiences, and is applicable to any type of disaster situation, regardless of the number of deaths. It is useful in situations where persons from other Member Countries are found as victims at a disaster site.

At its 49th General Assembly, held in Manila in 1980, Interpol adopted a resolution with recommendations directed to the Member States on the identification of victims of disasters.²² This resolution recognizes the basic human right of individuals to be properly identified after death, and the international importance of identification with regard to police investigations and religious and cultural matters. It recommends that Member Countries use the Guide and Interpol forms for identification, regardless of the number of victims of a disaster. Furthermore, it describes the obligations of the Standing Committee for the Identification of Victims of Catastrophes and recommends that Member States establish disaster victim identification teams comprising police officers, forensic pathologists, and forensic odontologists, or, at least, appoint responsible officers who should be the main contacts in their own countries when their citizens are involved in a disaster, or when requested to assist another country.

The *Disaster Victim Identification Guide* has several chapters. Chapter 1 explains that corpse identification is a difficult task that can only be concluded successfully with adequate planning and the interaction of several institutions. Chapter 2 addresses general considerations about disaster management, and Chapter 3 explains identification methods and reasons for involving several groups of specialists in the operation. Chapter 4 describes the three major stages in victim identification, namely: search for ante-mortem information for possible victims; recovery and examination of bodies to establish post-mortem evidence from the deceased; and comparison of

²⁰ The list of Member States, the Constitution and other institutional information about Interpol can be viewed at www.interpol.int.

²¹ The complete text and forms of the Disaster Victim Identification Guide can be viewed at www.interpol.int/Public/DisasterVictim/Guide/Default.asp.

²² Resolution AGN/65.RES.13.

ante-mortem and post-mortem data. Chapter 5 presents a series of forms used to collect data by elimination; these can be used by member countries to facilitate the manual (that is, not computerized) comparison of data. Chapter 6 refers to the liaison between countries after a disaster or during the response planning phases, and includes references to international law, regulations, and agreements. In this chapter, Interpol recommends that because there are no international agreements on cooperation for disaster victim identification, member countries should look at the possibility of their own identification experts traveling to the country in which an incident has occurred when their citizens may be victims. The Guide gives recommendations on how to manage the assignment of such personnel.

The Interpol Guide is the only international instrument found that specifically addresses concrete disaster victim identification techniques in disaster conditions. They are not mandatory but are presented as recommendations, and it depends on the will and desire of Member States or of an organization to adopt them. However, the recommendations are of fundamental value in that they expressly recognize the basic right of individuals to be identified after death. They also lay the groundwork for cooperation among countries, not only so contact teams can be established to identify foreign victims in the country affected, but so that groups trained in identification can travel to other countries to provide assistance.

Geneva Conventions and other protocols: principles of international humanitarian law

International humanitarian law, also known as the law of war, or the law of armed conflict, is a set of rules which seeks, during armed conflict, to protect persons who are not or are no longer participating in the hostilities, and to limit methods of warfare.

Within this framework, international humanitarian law addresses the handling of corpses including aspects on search, identification, and final disposal of human remains resulting from armed conflict. The latter is addressed in the Law of the Hague of 1899 and 1907, the four Geneva Conventions of 1949, Protocols I and II (1977) to the Geneva Conventions, and the rights embodied in customs or generally practiced law.²³

The principles that address handling of dead bodies in accordance with international humanitarian law, including binding and non-binding laws, are summarized in the following (International Committee of the Red Cross, 2003):²⁴

- ◆ All the parties in an armed conflict: “...should, without delay, take all possible measures to seek and collect the dead, without distinction, and have to treat them with respect and dignity avoiding the plunder and the dispossession of the same.”

23 To see the complete texts of the Conventions, visit the web site of the International Committee of the Red Cross (ICRC): www.icrc.org.

24 These principles have been extracted from Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949, articles 15 to 17; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva, 12 August 1949, articles 18 to 21; Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, articles 120 and 121; Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949; articles 129 to 131; Protocol (I) Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, articles 32 to 34; and Protocol (II) Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, article 8.

- ◆ All the parties in an armed conflict should take measures to identify the dead before burying them or burning them. The Conventions also state: “...Parties to the conflict shall ensure that burial or cremation of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination, if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made.”
- ◆ “...Bodies shall not be cremated except for imperative reasons of hygiene or for motives based on the religion of the deceased. In case of cremation, the circumstances and reasons for cremation shall be stated in detail in the death certificate or on the authenticated list of the dead.” In an armed conflict it is necessary to bury or to burn honorably the dead and to respect their graves. The people whose fatal remains cannot be delivered to their family members in an armed conflict will be buried individually. All the graves will be marked. Only exceptionally will collective graves be utilized.
- ◆ “All the parties in an armed conflict have to do everything possible to provide information on the identity, the location, and the cause of the death of the deceased to the responsible authorities or to their relatives.”

The standards mentioned above, that should be respected by the signatory states of the Conventions of Geneva and its Additional Protocols,²⁵ are probably the oldest provisions regarding management of human remains although they apply to international and domestic armed conflict situations and not to natural disasters. In armed conflicts there are belligerent parties that cause a large number of the fatalities, and it is in their hands to stop fighting or declare a truce in order to collect the bodies, identify them, and to bury them with dignity and respect. These are, however, very valuable principles because they expressly recognize the importance of prioritizing identification of the dead as a fundamental right.

Provisions of the International Civil Aviation Organization (ICAO)

When aviation accidents occur—events that tend to produce a significant number of fatalities—there are various sectors interested in the recovery and identification of the dead. First, are the airline companies, who are pressured by relatives of the victims and have a basic interest in establishing the cause of the accident. Then there are insurance companies that must pay high sums of money to relatives of the dead. Finally, there are the state entities in charge of civil aviation control, whose basic objective is the investigation of the circumstances surrounding the accident to prevent similar events from occurring in the future.²⁶

This has led to the creation of regulations for investigating aviation accidents which include, as part of the investigation, the requirement of identifying corpses. At the national level, these standards are usually included in aeronautic laws and codes, and at the international level, they are found in recommendations made by the International Civil Aviation Organization (ICAO).

25 For more information about implementation of international humanitarian law at the local level, consult the document and commentaries database on the web site of the International Committee of the Red Cross: www.icrc.org/ihl-nat.

26 In practice, when there is an international aviation accident, teams responsible for handling cadavers are dispatched immediately to the disaster site. They perform very efficiently and, in general, cooperate with local authorities in the removal of corpses.

The ICAO, the international regulatory organization for civil aviation, fulfills a key role in investigative tasks in the event of international accidents of civil aircraft (that is, aircraft not belonging to a State).²⁷ National regulations that generally coincide with those of the ICAO are applied in accidents involving domestic aircraft that occur in national territory.

The Convention on International Civil Aviation, which created the ICAO, states in Article 26 that in the event of an accident that causes death or serious injury, or indicates serious technical defects in the aircraft or in navigational facilities or services, the State where the accident occurs will open an inquiry about the circumstances of the accident in accordance with the procedures recommended by the ICAO, to the extent that State regulations allow.

For the purpose of establishing the procedures to carry on research, the Council of the ICAO adopted on 11 April 1951 the International Standards and Recommended Practices for Aircraft Accident and Incident Investigations, designated as “Annex 13 to the Agreement.”²⁸ The latter contains recommendations on the standards and the methods for conducting investigations, providing for uniformity among Member States in the process. Chapter IV on notification, establishes that the State where the event occurs should send as quickly as possible to the State of registry, the State of the operator, and the State of manufacture, information about, among other issues, the number of crew and passengers on board, and the dead and critically wounded (Section 5.2, paragraph H). Moreover, it establishes that “the only objective of accident or incident investigations will be the prevention of future accidents and incidents” and that “the purpose of this activity is not to assign blame or responsibility.”

Other relevant ICAO documents are the *Manual of Aircraft Accident Investigation* (Document 6920-AN 855/4) and the *Manual on Accident/Incident Reporting* (Document 9156-AN/900). Particularly, the *Manual of Aircraft Accident Investigation*, in reference to medical investigation, establishes that the object is to provide technically useful medical information so that the investigator in charge can reconstruct the accident to obtain data relating to ergonomic engineering, aspects of survival, etc., and to coordinate this information with the civil authorities to carry out legal identification of the victims, to certify deaths, and perform related activities.

International instruments on human rights: right of corpses to be identified and buried respecting the religious rites and cultural beliefs after catastrophic events of natural origin

Unlike the aforementioned documents, which in one way or another make reference to the management of corpses, international instruments on human rights do not expressly mention the rights of the relatives of victims of a natural disaster to demand that emergency management authorities recover and identify the victims and bury them in accordance with the religious rites and cultural beliefs of the victim or of the place where the disaster occurred. This does not rule out the existence of such a right,

27 The ICAO was created by the Convention on International Civil Aviation in Chicago on 7 December 1944. More information and documents can be viewed at the ICAO web site: www.icao.int.

28 Over time, Annex 13 to the ICAO Convention has undergone numerous changes; the tenth revision, adopted on 26 February 2001 and put into effect as of 1 November 2001 is currently in force. With the inclusion of this amendment, the ninth edition of the Annex has been published and is now titled “Investigation of Aviation Accidents and Incidents.”

since many human rights are based on the interpretation of firmly established rights. For example, the rights to truth or the right of persons not to be excluded from the legal order were prepared on the basis of the rights to life, freedom, and personal safety, among others.

In this context, it can be stated that family members of people missing as a consequence of natural disasters, have the right for the remains of their loved ones to be recovered, identified, and buried, respecting religious rites and cultural beliefs. This right has been specifically recognized in the international instruments already referenced, and derives from the joint interpretation of protected human rights, as we attempt to demonstrate in the next section.

Rights established by the American Convention on Human Rights²⁹

Right to physical, mental, and moral integrity

Article 5 of the American Convention on Human Rights establishes that “Every person has the right to have his physical, mental, and moral integrity respected...” (OAS, 2003).³⁰ Regarding the meaning and scope of this right and the way it is applied to the issue of handling the dead, it is necessary to refer to what the Inter-American Court of Human Rights expressed when analyzing a possible violation of Article 5 in the context of forced disappearance of persons:³¹

- ◆ “The anguish and uncertainty that the disappearance and lack of information about the whereabouts of the victim caused his next of kin, resulted in non-pecuniary damage.”
- ◆ “It attends to the family members the right to know where to find the mortal remains of their loved one. This represents a just expectation that the State should fulfill with the means available.”
- ◆ “The continued denial of the truth about the fate of a disappeared person is a form of cruel, inhuman, and degrading treatment for the close family. The right to the truth has been developed sufficiently in international human rights law. As this Court has maintained on previous occasions, the right of the victim’s next of kin to know what has happened to him, and, when appropriate, where the mortal remains are, constitute a measure of reparation and, therefore, an expectation that the State should satisfy for the next of kin and society as a whole.”

29 The American Convention on Human Rights and the American Declaration of the Rights and Duties of Man, along with other instruments and institutions developed by the initiative of the Organization of American States (OAS) to promote and protect human rights, comprise the so-called Inter-American System of Promotion and Protection of Human Rights. The victim of a violation of the rights established in the Convention can petition the Inter-American Commission on Human Rights once having exhausted domestic recourse. If the Commission declares the case to be admissible, they prepare a report on their conclusions according to Article 50 of the Convention and can publish the same or present it to the Inter-American Court on Human Rights for their consideration should the accused State accept the judgment of the Commission. The Inter-American System of Protection of Human Rights allows the Commission to deliberate on cases in which the accused State, being an OAS member, might not have ratified the American Convention. This is due to the fact that, according to the Charter of Organization, the Commission is a permanent organ of the OAS, and its jurisdiction extends to all members as a principle established in the American Declaration of the Rights and Obligations of Man.

30 The complete text of the Convention can be accessed at: www.cidh.org/Basicos/basic3.htm.

31 Trujillo-Oroza Case, “Reparations, Judgment of 27 February 2002,” paragraphs 88, 113, 114, and 115. A similar situation was presented in the Caracazo case, “Reparations, Judgment of 29 August 2002, Series C no. 95, paragraphs 121-125.” See complete texts of judgments at the web site of the Inter-American Court of Human Rights: www.corteidh.or.cr.

- ◆ “It is an act of justice to know the whereabouts of the disappeared person and it is a form of reparation because it allows the victims to be honored, since the mortal remains of a person merit being treated with respect by their relatives, and so that the latter can bury them appropriately.”

In a similar case the Court established:

“...Furthermore, the incineration of the mortal remains of Mr. Nicholas Blake in order to destroy every trace that could reveal his whereabouts, threatens the prevailing cultural values transmitted from generation to generation in Guatemalan society concerning respect for the dead. The incineration of the mortal remains of the victim, ordered by a member of the Guatemalan army, and carried out by civilian patrols, intensified the suffering of the relatives of Mr. Nicholas Blake.”³²

In view of the above judgment, and with the aim of establishing an analogy to cases of forced disappearances that allege violations of Article 5 of the Convention, we should point out that when the authorities do not collect or identify the corpses, and when they incinerate or bury them in common graves, making identification difficult or impossible, those dying as a result of forces of nature become missing persons because of the action or omission of the State with the consequent material and moral harm to the families of the missing person. In other words, the State denies to family members the right to know the fate and whereabouts of their loved ones. This relates directly to the so-called right to the truth, which has been fully elaborated by judgments of the Inter-American Court of Human Rights. Consequently, regardless of the fact that the State could have responsibility in a catastrophe by not preventing the harmful consequences of a natural phenomenon, it is obliged to use all means available to determine whether missing persons are living or dead. The refusal to act generates, without a doubt, intense suffering for the family members and associates of the victims who experience anguish, frustration, and impotence that ultimately affect their moral integrity.

Other violations of rights

With regard to the burial of corpses, authorities should proceed as outlined in Chapter 2 of this manual. If a large number of corpses result from a natural disaster, the remains can be disposed of in collective graves in a way that respects their individuality, ensuring that there are clear instructions about the location of each body and that these are related to the identification file (chain of custody). Practices such as the use of common graves or cremation make identification impossible, besides violating religious and cultural beliefs. This leads to the question of the possible violation of other protected rights, such as freedom of conscience and religion, which are consecrated in Article 12 of the Convention. What the Inter-American Court of Human Rights expressed in the Blake case is very valuable in that it recognized the need for preserving the cultural value of respecting the dead, and that transgression of this results in intensified suffering of the family members.

Depending on the circumstances, relatives of victims could present petitions relating to violation of Articles 5 (personal integrity), 12 (freedom of conscience and religion), and 1.1 of the American Convention (obligation of the State to respect recognized rights and freedoms).³³

Another aspect that should be considered regarding possible violations of human rights protected by the American Convention is the so-called “states of emergency” that are usually imposed after disaster situations. This concerns the option included in the legal codes of the region, either in their constitutions or in special legislation, which makes it possible to temporarily suspend certain rights in situations of public danger, armed conflict, or disaster. The Commission and the Inter-American Court of Human Rights thoroughly reviewed the topic when creating Article 27 of the American Convention. This article lists a series of rights that cannot be suspended, among which the right to personal integrity is specifically mentioned.

Right to cultural and religious identity, right of indigenous peoples, and right to religious freedom in the International Covenant on Civil and Political Rights and related provisions ³⁴

Frequently it is stated that the identification of dead bodies is related to the right to identity, understood as the right that a body be identified after death. However, the concept of the right to identity as a protected human right has evolved in a different sense.

The right to identity has been defined as the “existential interest of each person in not seeing the external or social projection of his or her personality upset, denaturalized, or denied. ...It means that the essential cultural patrimony of the individual, made up by a multiplicity of varied aspects—such as, inter alia, identity of origin, family identity, and intellectual, political, religious, social, and professional identity of each person—is not to be argued, distorted, cut short, or denied....” (Apfelbaum, Bracciaforte, and Boye, 1996). This right is recognized in several international human right instruments, such as the Human Rights Declaration (Article 6), the International Covenant on Civil and Political Rights (Article 16) and the Convention on the Rights of the Child (Articles 7 and 8).³⁵

This right has been developed in cases that involve the right of children to have birth certificates or identity documents, international kidnapping or the illegal transfer of children from one country to another, and the right of the children of “disappeared” parent(s) to know his or her true identity. It implies, also, rights to cultural

33 It is possible to present a case to the Inter-American Commission on Human Rights not only when there are alleged violations of rights protected in the American Convention on Human Rights or the American Declaration on the Rights and Duties of Man, but when a State signatory of the Convention does not comply with statutes established by local legislation (Article 25 of the Convention).

34 The complete text of the International Covenant can be viewed at: www.ohchr.org/english/law/ccpr.htm. The Human Rights Committee is the body responsible for supervising compliance with the standards of the International Covenant on Civil and Political Rights. This is accomplished through reports on the measures that the States parties have adopted to comply with the articles of the Covenant and a system of individual petitions applicable to the States that have ratified the Optional Protocol of the Covenant. This mechanism allows those who believe that a protected right has been violated to enter a petition before the Commission. Once the petition is declared admissible, the Commission examines it and issues a series of “concluding observations” (Article 5, Optional Protocol). These are not obligatory in nature but have important moral value.

35 See the complete texts at the web site of the Library of Human Rights of the University of Minnesota: www1.umn.edu/humanrights/index.html. The American Convention on Human Rights does not expressly sanction the right to identity, but this could be developed based on the right to recognition as a person before the law (Article 3), personal integrity (Article 5) and protection of the family (Article 17).

identity, to religious freedom, and to sexual identity, among other issues. It is this line of reasoning that merits further study.

In this sense, we affirm that the right to identity is related to the right to a burial in accordance with the religious rites and cultural beliefs of the deceased, of their families, or of the place where the catastrophe occurred, if the beliefs of the deceased cannot be established. Also, the authorities in charge of managing the corpses during the stages of removal, identification, and burial of remains, should provide the corpses with dignified treatment in accordance with traditions of respect due to the dead, and to comply with the religious rites or funeral customs that the deceased found at the tragedy site would have followed.

More concretely, violations of these rights could occur with regard to indigenous communities when the authorities in charge of managing the corpses do not respect their traditions. Indigenous communities tend to practice ancestral customs with regard to death that are different from the most popular western religions, and that are intrinsic to their cultures and traditions. These are protected by local statutes and international instruments of human rights in general (International Covenant of Civil and Political Rights, Article 27), and others that apply specifically to indigenous peoples, such as Agreement No. 169 on Indigenous and Tribal Peoples of the International Labour Organization which guarantees the right of the aboriginal peoples to have their own cultural life, to practice their own religion, and to use their own language.

The right to religious freedom is also recognized in several international instruments (for example, Article 12 of the American Convention on Human Rights; Article 13 of the International Covenant on Economic, Social, and Cultural Rites; and Article 18 of the International Covenant on Civil and Political Rights). This right can also be seen to be affected with practices such as cremation of corpses, burial in common graves, or fumigation of human remains in unjustified circumstances as mentioned in Chapter 2 of this manual.

CONCLUSIONS

The countries of the Region of the Americas have taken responsibility for regulating matters relative to the identification and disposition of corpses, as well as resolving the legal situation of missing persons in cases of disasters. We have not located standards that establish exceptions or special regulations regarding the existence of a large number of corpses.

Thus, when natural events generating a large number of fatalities occur, in principle there would be no reason not to proceed in accordance with the local standards mentioned, that is, proceed with the adequate removal of the bodies, prepare an identification file, bury the corpses individually, and maintain the chain of custody that will allow future exhumation.

The identification of a large number of bodies is a technical challenge that can be met regardless of the number of victims if the authorities act in accordance with a

series of procedures described in Chapters 1 and 2 of this manual. Otherwise, there can be legal consequences in that victims might present claims of material and moral damages.

The right of family members, associates, or people who have a legitimate interest in the identification of a corpse stems from domestic provisions of the States and from international instruments that have been referenced throughout the chapter. Moreover, this right stems from the analogous interpretation of human rights which are protected by the legal codes of States and in ratified international instruments.

Accordingly, national authorities cannot ignore that the complete identification of the body is the only way of being certain of a death, eliminating all possibilities of fraud. Fundamentally, it is the only way to put an end to the anguish and pain of the family members. This compels the States to adopt as technical or guiding standards, preferably with a legal component, the principles mentioned in Chapter 2 of this manual and to instruct emergency personnel that there is no threat for epidemics associated with handling dead bodies. This would prevent irreparable harm to the families of the victims, and the resulting lawsuits that could lead to legal responsibility for damages.

Moreover, the groundwork should be laid for efficient and effective cooperation with the identification teams from other countries so that in the event of a disaster, they can be transferred to the affected country in order to provide assistance. This should be done within the framework of existing cooperation agreements, by creating special arrangements, or making use of established systems such as that provided by Interpol.

MODEL LAW FOR MANAGEMENT OF DEAD BODIES IN DISASTER SITUATIONS

Article 1

The State, through the legislating bodies, has the obligation to take necessary measures for recovery, satisfactory removal, identification, and disposal of the bodies and body parts resulting from disaster situations. The identification of the remains of disaster victims is a right of family members, of those with a legitimate interest in their identification, and of the entire affected community.

Article 2

Preparations. The Emergency Operations Committee will have as one of its functions the management of dead bodies in disaster situations. The entity responsible for the coordination of this task will be the Prosecutor's Office, the Ministry of the Interior, or another entity to be determined by the State. It will be supported by an inter-institutional team that is responsible for the tasks of location and removal, identification, and final disposition of the bodies, as well as attending to surviving family members.

Article 3

Team for managing dead bodies. The responsible authority should organize and prepare a team for mass fatality management in disaster situations. This team should have received appropriate training, and participated in simulation exercises in anticipation of a major disaster. They should have the necessary resources to recover the human remains, proceed with their removal, determine the cause and time of death, establish their identity, organize identification files, and prepare the remains for their final disposal.

Article 4

Body removal. The recovery of dead bodies should be carried out in a manner that allows as much evidence from the scene as possible to be preserved, thereby contributing to determining the cause of death and the identity of the dead. The professionals in charge should prepare a file that includes: the name of the responsible officer; the hour, date, and site of the removal; the condition of the body; estimated age, sex, and race (if recognizable); description of clothing, documents, and other items that accompany the body; any correlation between the injury and the location of the remains; and the signature of the responsible officer.

Article 5

Wrapping the remains. Human remains should be placed in body bags or otherwise wrapped, as specified in regulations, and be accompanied by corresponding documents pertaining to their removal.

Article 6

Transfer of the bodies and body parts to temporary morgues or holding areas. Regulations will specify how the remains should be transported and maintained at pre-determined sites where they will be prepared for visual recognition by family members, and undergo forensic examinations.

Article 7

Body identification. The professionals in charge of identification should prepare an identification file confirming and certifying the description made when the body was removed from the disaster site. The bodies should be classified, at a minimum, by sex, age, skin color, and approximate height, and prepared for visual recognition by family members or associates.

Article 8

Unidentified bodies. In the event that bodies are not recognized or identified, it will be necessary to complete the identification file by collecting samples required for DNA profiles and other data specified in the regulation.

Article 9

Final disposal of the bodies. Unidentified bodies should be buried in a manner that preserves their individuality as specified in the regulations. The exact burial site should be marked so that there is a clear relationship between the identification file and the exact location of the corresponding remains (preserving chain of custody).

Article 10

Burial. The human remains should be handled at all times with dignity and respect and buried in accordance with the religious traditions or cultural rites of the place where the event occurred. The use of common graves is prohibited. Common graves are understood to be places in which human remains are placed without respecting their individuality and without corresponding identification files that will permit future exhumation.

Article 11

Cremation. Cremation of unidentified bodies is prohibited. In the event that there are scientifically verified health risks derived from the remains, forensic medical procedures should be followed, and burial sites should be correctly marked in order to preserve the chain of custody.

Article 12

Cooperation. The responsible authorities should develop cooperation agreements with other States so that their teams can provide assistance with removal and identification of the dead in the event that domestic resources are insufficient.

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