Securing Afghanistan’s Past – Human Identification Needs Assessment and Gap Analysis

April 2013

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For more than 25 years, Physicians for Human Rights (PHR)’s use of science and medicine has been on the cutting edge of human rights work.

1986 — Led investigations of torture in Chile, gaining freedom for heroic doctors there
1988 — First to document the Iraqi use of chemical weapons on Kurds, providing evidence for prosecution of war criminals
1996 — Exhumed mass graves in the Balkans for International Tribunals, and sounded the alarm about refugee camps in Bosnia and Kosovo.
1996 — Provided evidence of genocide for the Rwanda Tribunal
1997 — Shared the Nobel Peace Prize for the International Campaign to Ban Landmines
2003 — Warned US policymakers on health and human rights conditions prior to and during the invasion of Iraq
2004 — Documented genocide and sexual violence in Darfur in support of international prosecutions
2010 — Investigated the epidemic of violence spread by Burma’s military junta
2012 — Trained doctors, lawyers, police, and judges in the Democratic Republic of the Congo, Kenya, and Syria on the proper collection of evidence in sexual violence cases
2013 — Won first prize in the Tech Challenge for Atrocity Prevention with MediCapt, our mobile app that documents evidence of torture and sexual violence
Acknowledgements

This human identification and needs assessment report was written by Stefan Schmitt MS, International Forensic Program (IFP) director at Physicians for Human Rights (PHR); Amanda Sozer, PhD, PHR expert consultant in forensic genetics, mass fatalities, and human identification; and Dallas Mazoori, PHR Afghanistan human rights and transitional justice expert.

This report is based on field research conducted by the above-mentioned team as well as the following individuals: Gillian Fowler, MSc, forensic anthropologist; Robert C. Bux, MD, forensic pathologist; Chris Engels, JD, international legal expert; Ashraf Bakhteyari, executive director, Afghanistan Forensic Science Organisation (AFSO); and Zabi Mazoori, IFP Afghanistan Country Project Coordinator for PHR.

Translation into Dari was carried out by Ali Rahimi, director, Ali Kaihan Translation Company; and Zabi Mazoori, IFP country project coordinator at PHR.

The recommendations and action items contained in this report are the result of the PHR expert team’s assessment of Afghanistan’s current capacity to undertake human identifications, and what steps need to be taken in order for it to reach its desired future capacity. In developing these recommendations and action items, the authors have kept in mind the challenging situation in which stakeholders in Afghanistan are carrying out their work.

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The report was written in its original in English and then translated into Dari.
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### Abbreviations

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<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AABB</td>
<td>formerly American Association of Blood Banks</td>
</tr>
<tr>
<td>ACTA</td>
<td>Afghan Criminal Techniques Academy</td>
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<tr>
<td>ACSF</td>
<td>Afghan Civil Society Forum</td>
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<td>AFSo</td>
<td>Afghan Forensic Science Organization</td>
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<td>AGSA</td>
<td>Department for Safeguarding the Interests of Afghanistan</td>
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<td>AHRDO</td>
<td>Afghan Human Rights and Democracy Organization</td>
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<td>AIHRC</td>
<td>Afghanistan Independent Human Rights Commission</td>
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<td>AJP</td>
<td>Afghanistan Justice Project</td>
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<td>APRP</td>
<td>Afghanistan Peace and Reintegration Program</td>
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<tr>
<td>ANP</td>
<td>Afghan National Police</td>
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<tr>
<td>ANPA</td>
<td>Afghan National Police Academy</td>
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<tr>
<td>AREU</td>
<td>Afghanistan Research and Evaluation Unit</td>
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<tr>
<td>CID</td>
<td>Criminal Investigation Division</td>
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<tr>
<td>CPC</td>
<td>Criminal Procedure Code</td>
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<tr>
<td>DCT</td>
<td>Department of Criminal Techniques</td>
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<td>DVI</td>
<td>Disaster Victim Identification</td>
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<td>EUISS</td>
<td>European Union Institute for Security Studies</td>
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<tr>
<td>FBI</td>
<td>Federal Bureau of Investigation</td>
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<tr>
<td>GISA</td>
<td>Government of the Islamic State of Afghanistan</td>
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<tr>
<td>GPPT</td>
<td>German Police Project Training</td>
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<td>HIDAGA</td>
<td>Human Identification Needs Assessment and Gap Analysis</td>
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<td>HRW</td>
<td>Human Rights Watch</td>
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<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<td>IFP</td>
<td>International Forensic Program</td>
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<tr>
<td>ISFG</td>
<td>International Society for Forensic Genetics</td>
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<tr>
<td>JCIP</td>
<td>Justice Center in Parwan</td>
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<td>KAM</td>
<td>Workers’ Intelligence Department</td>
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<tr>
<td>KhAD</td>
<td>State Information Services</td>
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<tr>
<td>LMD</td>
<td>Legal Medicine Directorate</td>
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<tr>
<td>MoIC</td>
<td>Ministry of Information and Culture</td>
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<tr>
<td>MoH</td>
<td>Ministry of Higher Education</td>
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<tr>
<td>MoI</td>
<td>Ministry of Interior</td>
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<tr>
<td>MoJ</td>
<td>Ministry of Justice</td>
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<tr>
<td>MoPH</td>
<td>Ministry of Public Health</td>
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<tr>
<td>MoU</td>
<td>Memorandum of Understanding</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
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<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
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<td>PDPA</td>
<td>People’s Democratic Party of Afghanistan</td>
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<td>PHR</td>
<td>Physicians for Human Rights</td>
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<tr>
<td>PRT</td>
<td>Provincial Reconstruction Team</td>
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<td>RM</td>
<td>Reported Missing</td>
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<tr>
<td>RMSI</td>
<td>Remote Medical Solutions International</td>
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<tr>
<td>SWGDVI</td>
<td>Scientific Working Group on Disaster Victim Identification</td>
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<tr>
<td>TJCG</td>
<td>Transitional Justice Coordination Group</td>
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<td>UNAMA</td>
<td>United Nations Assistance Mission to Afghanistan</td>
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Executive Summary

The Islamic Republic of Afghanistan is at a turning point in its history. The decisions its people and their government make now will direct its course for generations. Conflict, destruction, poverty, lawlessness, discrimination, corruption, and violence have been its national legacy for 35 years. It has suffered military invasion and occupation from abroad. It has been terrorized by factions from within. Many Afghans have been both victims and perpetrators, and the hour has come for Afghanistan and its citizens to commit themselves to be neither. At hand is the defining moment for the Government of Afghanistan to acknowledge past and current wrongs, no matter the transgressor, to identify and honor those who are missing and to ensure a measure of justice for those they left behind.

Since 1997, Physicians for Human Rights (PHR) has dedicated itself to creating, supporting, and enhancing a transitional justice strategy in Afghanistan for a society that has suffered decades of continuous armed conflict, as well as innumerable tragedies inextricably intertwined with conflicts of such duration and intensity. The egregious human rights violations that resulted were widespread and barely an Afghan family was spared. Estimates are that at least one million Afghan citizens are missing or disappeared. Their families are morally and legally entitled to know the truth about what happened to them, and it is incumbent upon the Government of Afghanistan, with the assistance of Afghan civil society, to bring individual and collective acknowledgement and closure to those families by attempting to identify the missing by name. These identifications can be conducted by and through the collection and analysis of any and all physical and testimonial evidence. This process could provide information as to the victim’s identity, and hopefully lead to further determinations as to where, why, how, and by whom each victim came to be missing.

Many of the missing victims in Afghanistan are buried in mass graves, a reality that brought to the forefront the need for a field of forensic scientific study and expertise, not indigenous to Afghan culture nor historically embedded in its governmental, medical, legal, or academic institutions. Hence, looking forward, PHR and the funder of this project, the US Department of State’s Bureau of Democracy, Human Rights, and Labor, realized how critical it was to conduct the Human Identification Needs Assessment and Gap Analysis set out herein. Such a Needs Assessment and Gap Analysis provides the Afghan government, Afghan civil society, relevant national and international nongovernmental organizations, and the international donor community with the necessary considerations and steps to develop the means to establish a national human identification effort for the victims of 35 years of war and mass atrocities.

Notwithstanding that this report is entitled “Securing Afghanistan’s Past,” it actually looks to its future. PHR’s necessarily realistic and sobering assessment of the current conditions in the country constitutes the mandatory benchmark by which to measure capacity-building needs from this point forward. Perhaps more importantly, it can serve as the impetus for a transitional justice process to emerge in Afghanistan. There is no doubt the success of this project will require patience, resources, commitment, and a new cooperation between and among Afghanistan’s government and its diverse population, which has suffered so much for so long. If the recommendations resulting from this endeavor are put into action, Afghanistan will possess the power of forensic investigation and the development of the rule of law that are essential prerequisites for all other actions. In turn, these new capacities can be used as a platform for truth, accountability, and ultimately reconciliation that are essential foundations for peace.
Introduction

Purpose

Physicians for Human Rights (PHR) conducted its first forensic work in Afghanistan in 1997 under the auspices of the United Nations Commission for Human Rights, documenting a mass grave found on the outskirts of Sheberghan in the north of the country. Since then, PHR has forensically documented numerous mass grave sites in the country, mainly in the areas of Mazar-e Sharif, Sheberghan, Bamyan, and Kabul.

In 2008, Stefan Schmitt, director of PHR’s International Forensic Program (IFP), met with Dr. Khalid Zurmati, who was at the time the director of the Forensic Medicine Department (FMD) in Afghanistan. Dr. Zurmati recognized the need for Afghanistan to address crimes of the past and evidence from mass graves. He requested the help of PHR to evaluate the need for developing forensic capacity and make recommendations for enhancing Afghanistan’s human identification efforts.

In October 2009, with the support of the US Department of State’s Bureau of Democracy, Human Rights, and Labor, PHR initiated a three-year project, “Securing Afghanistan’s Past.” PHR accomplished the mandate of the grant with the support of Afghanistan’s Ministry of Interior (MoI), the Ministry of Public Health (MoPH), the Legal Medicine Directorate (LMD), the Supreme Court, the Afghanistan Independent Human Rights Commission (AIHRC), the non-governmental Transitional Justice Coordination Group (TJCG), the United Nations Assistance Mission to Afghanistan (UNAMA), and the Afghan Forensic Science Organization (AFSO), a new independent organization founded as an outcome of the training carried out under this grant.

The stated objectives of this project were to:

- Develop local capacity to document and secure mass graves in Afghanistan, while concurrently mitigating or preventing when possible the unprofessional destruction of evidence for documentation of past abuses.
- Develop an information-sharing network within which to introduce forensic concepts and standards to civil society and governmental decision makers.
- Conduct a “Human Identification Needs Assessment and Gap Analysis” (HIDAGA) for a report that will provide Afghanistan’s governmental institutions, Afghanistan’s civil society organizations, and the international donor community with information about local scientific and technical capabilities and needs for addressing the identification the missing in Afghanistan.

This report is the result of the HIDAGA. It identifies forensic operational needs and gaps, offers potential solutions, and proposes appropriate actions and resources so as to best utilize forensic capabilities from this point forward. Importantly, it also addresses the concurrent development of an educational program to establish and/or enhance Afghan academic curricula in the forensic science disciplines. The report provides critical input regarding approaches to truth finding, acknowledgement of victims’ rights, and reconciliation gleaned from and substantiated by the experiences of PHR’s three-year project in Afghanistan.

PHR anchors its discussion of alleged atrocities in Afghanistan in physical evidence. However, the project also supports a victim’s right to know, not only by creating the basic capacities to carry out forensic documentation, but as important, by providing survivors and families with a platform for discussion of the sobering realities of the evidence collected and analyzed and what they can expect to learn and know. In a country where little effort has been dedicated to credible truth-seeking, this report provides national stakeholders with fact-based findings. The report offers specific recommendations for the development and use of forensic capacity to address human rights violations in Afghanistan.
Background

Afghanistan’s recent history is one of protracted conflict in which large-scale human rights violations, war crimes and crimes against humanity have been committed with impunity by numerous actors and state parties. It is generally accepted that the descent into protracted and multilayered conflict began with what is known as the “Saur Revolution” led by the People’s Democratic Party of Afghanistan (PDPA). The president of Afghanistan at the time, Daud Khan, was assassinated in April of 1978 and his government overthrown. The first reported massive purges and disappearances in Afghan society followed his assassination.

The Afghan conflict itself, in very general terms, can be divided into the following phases:¹

<table>
<thead>
<tr>
<th>1. Period</th>
<th>1. Dates</th>
<th>1. Overview</th>
</tr>
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<tbody>
<tr>
<td>Taraki/Amin</td>
<td>April 1978 to December 1979</td>
<td>Characterized by the communist coup d’etat which brought the PDPA to power and the resulting wave of repression that found thousands of Afghans subject to arbitrary arrest, disappearance and execution at the hands of the state.</td>
</tr>
<tr>
<td>Soviet Occupation</td>
<td>December 1979 to February 1989</td>
<td>Repression in the cities continued and the countryside was subjected to mass aerial bombardment and scorched earth tactics. The result was the massacre of civilians, the destruction of entire districts and the creation of the world’s largest refugee population as millions of Afghans fled the country.</td>
</tr>
<tr>
<td>Post-Soviet Najibullah</td>
<td>February 1989 to April 1992</td>
<td>The government increasingly relied upon regional militias to maintain control after the Soviet withdrawal, only to collapse with the mujahedin takeover of Kabul.</td>
</tr>
<tr>
<td>Mujahedin/Kabul civil war</td>
<td>April 1992 to September 1996</td>
<td>This phase was characterized by mujahedin factional rule and a brutal civil war. In Kabul alone, tens of thousands of civilians were killed and abducted, and torture, rape, murder, and disappearance were common practices by all sides.</td>
</tr>
<tr>
<td>Taliban</td>
<td>September 1996 to December 2001</td>
<td>In response to the anarchy of the mujahedin period in Kandahar, the Taliban promised a return to Islamic law. The Taliban went on to capture 90% of the country, with oppression of women and massacres of ethnic minorities being the hallmark of their control.</td>
</tr>
<tr>
<td>Karzai</td>
<td>December 2001 to present</td>
<td>Despite over a decade of international intervention in Afghanistan, the conflict continues, as do innumerable abuses throughout the country. As a result, most Afghans are uncertain as to what the future holds.</td>
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</table>

When the United States and its international allies launched their October 2001 military intervention in Afghanistan, they relied heavily on the assistance of former mujahedin forces and commanders, now part of the United Front², to remove the Taliban from power. Since then, these commanders, many of whom have been involved in the conflict in Afghanistan since the late 70s and early 80s, have returned to positions of power across the country and play a significant role in Afghanistan’s current political landscape and government. Many of them are accused of having committed war crimes and crimes against humanity, and of being responsible for many of Afghanistan’s mass graves.³

¹ Many Afghans when speaking of the conflict in Afghanistan refer to it in terms of the phases distinguished above; for instance they will speak of daure mujahedin (the mujahedin period) or daure Najibullah (the Najibullah period) or daure Karzai (the Karzai period).
² Also known as the “Northern Alliance” throughout international media.
As previously stated, PHR investigated several mass graves in the north of the country. Full investigations into these and other graves in Afghanistan were recommended by PHR and representatives of the UN High Commissioner for Human Rights, but never conducted due to multiple challenges of access, security, and resources. In 2002, PHR discovered an apparent mass grave that was located outside of Sheberghan, which allegedly contained the remains of Taliban prisoners who had surrendered to US and United Front troops in November 2001, but whose bodies were reportedly buried in the Dasht-e-Leili desert. Afghan detainees allege that US troops were present at the site of the alleged massacre.  

In February and May of 2002, and under the auspices of the UN, PHR’s IFP conducted an initial examination of part of the site. PHR partially exhumed 15 remains, and conducted autopsies on three individual remains, finding that the likely cause of death was consistent with suffocation. Ever since, PHR has repeatedly called for that site to be secured, for witnesses to the alleged massacre to be protected, and for a full investigation of the alleged massacre. Despite these appeals, actions of the mass grave site were dug up and removed, as observed by eyewitnesses and confirmed by satellite photographs taken in 2006. Neither U.S. nor Afghan authorities conducted any judicial investigation into the initial alleged massacre or the related subsequent crimes massacre or related subsequent crimes.

From the larger cities to remote mountain villages, it is hard to find an Afghan family that has not experienced the killing or disappearance of a loved one during the past few decades. Despite the scale and intensity of the past 35 years of violence, the Afghan government and the international community have largely ignored victims’ calls for a transitional justice process, including the investigation of massacres and mass graves such as those found near Sheberghan, nor have they delivered any subsequent remedial and/or judicial accountability measures.

Throughout decades of conflict, massive displacements, deaths, and disappearances, “missing people” have become a part of every Afghan’s life, to such a degree that “histories” of mass graves are passed on orally in Afghan society although they have not been verified within any institutional context or scientific effort.

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Methodology

Objectives of the HIDAGA

The overall objective of the HIDAGA is to provide Afghanistan’s government institutions, civil society organizations and the international donor community with critical information about the scientific and technical capabilities Afghanistan needs in order to document past abuses and undertake human identifications.

In order to meet this objective, PHR formed a multidisciplinary international team consisting of forensic scientists, forensic management specialists, and legal and political experts. The team was organized in order to bring individual and collective expertise to:

- Identify forensic human identification needs, goals, and objectives
- Identify roles and responsibilities
- Identify key forensic human identification processes that must be implemented to achieve basic scientific standards
- Identify the current capacities for DNA testing as well as legal and psychosocial support necessary for the development of a sound forensic DNA laboratory in Afghanistan
- Define preliminary information-sharing technology infrastructure for the tracking of reported missing persons, storage of samples and DNA profiles, and the process of comparing DNA profiles and producing identifications
- Provide a gap analysis to identify the difference between present capabilities and capabilities necessary to achieving stakeholders’ goals

Structured and unstructured interviews were conducted between 2010 and 2012 with human identification stakeholders. These stakeholders include the following:

- Members of the transitional justice and human rights community, principally members of the AIHRC and TJCG, a coalition of 27 civil society organizations active on transitional justice issues in Afghanistan
- Professors and administrative staff of Kabul Medical University and forensic science and anthropology departments, as well as medical schools at three private universities in Kabul: Chiragh Higher Institute of Medical Education, Khatemul Nabeine Institute of Higher Education, and Kateb Institute of Higher Education
- High-level officials at the MoI and officers of the Afghan National Police (ANP) Criminal Investigation Division (CID) and its forensic laboratory
- Afghanistan’s LMD medical doctors and staff who provided information and input for this report and visits were conducted to its facilities, including its laboratory
- Legal sector representatives, including two judges, two representatives of the Independent Defense Lawyers Association, and two prosecutors

PHR also conducted a conference on “Truth Seeking and the Role of Forensic Science” in October 2010. The conference initiated the first formal dialogue between victims of conflict and authorities in Afghanistan. Participants shared information and ideas on how to develop a policy and legal framework to protect and preserve mass grave sites and other scientific evidence of past abuses, and to begin more generally a process of truth seeking.

Approach

When the HIDAGA was designed in 2008, the situation in Afghanistan was relatively stable, travel over land was generally possible, and the situation in Kabul was considered relatively safe for international visitors. The initial approach was to bring in a large group of experts all at one time to conduct the
HIDAGA. In late 2009 and in the following years, with multiple attacks on international venues such as United Nations guest houses and offices throughout the country, that situation changed. Due to deteriorating security in the country, the initial plan of conducting a joint and team-based needs assessment over a two-week period in-country by a group of forensic experts was abandoned. Instead, a series of three smaller expert team visits were conducted over a 12-month period.

During three visits from May 2010 through July 2011, forensic anthropologist Gillian Fowler, MSc; geneticist and forensic laboratory management expert Amanda Sozer, PhD; forensic pathologist Robert C. Bux, MD; and international legal expert Chris Engels, JD, visited Afghanistan to meet and interview pertinent stakeholders in Afghanistan’s transitional justice, forensic, and educational communities. In addition, lengthening the time span for the needs assessment allowed for a more in-depth legal analysis, as well as follow-up interviews with a variety of stakeholders through late 2012. The PHR IFP director spent several months each year, beginning in 2010 and continuing through the present, visiting Afghanistan and following up on issues surrounding PHR’s HIDAGA project. Human rights and transitional justice consultant Dallas Mazoori, co-author of the present report, resided in Kabul until mid-2011 and coordinated in-country interviews, data gathering, and legal analysis for the report.

Forensic Human Identifications

Afghanistan – Current Context

Any human identification effort of those who either went missing, were disappeared, or were killed over the past three and a half decades in Afghanistan has to be viewed within the country’s current socio-political and economic environment. The question is not whether human identifications on a technical level are achievable, but whether they are sustainable within Afghanistan as a whole (i.e., within the country’s current governmental, legal, cultural, and educational realities).

The European Union Institute for Security Studies (EUISS) and the Carnegie Endowment for International Peace co-organized a conference called Afghanistan 2011-2014 and Beyond: Transforming International Support Operations for Sustainable Peace that was held in Washington DC on February 22 - 23, 2011. A joint report titled Afghanistan 2011-2014 and Beyond: From Support Operations to Sustainable Peace (June 2011) summarizes the highlights of the conference and notes in the Executive Summary:

“It may well be that no reconciliation is feasible in Afghanistan unless a profound constitutional and political reform is carried out, including a devolution process by which the government relinquishes some of its concentrated power. However, in spite of it being necessary and urgent, there is no clear vision for a transition in Afghanistan: accountability, mutual confidence and reliance are lacking. Political elites have contributed, with the collaboration or acquiescence of international actors, to rampant corruption in Afghanistan. In order for a transition to be successful, the international community should moreover help overcome the lack of political leadership in Afghanistan. In the socio-economic realm, the lack of job opportunities for up to one million young people, of whom only five percent have access to university education, has indeed become the most important problem for Afghanistan.”

Similarly, the state of higher education in Afghanistan has not received due attention. As this report will outline, the situation at Afghanistan’s universities is far from acceptable by any international standards. This reality is particularly concerning as it is fundamental that those who will play important forensic roles in Afghanistan’s future – judges, prosecutors, attorneys, scientists, and medical professionals – require sound university educations.

From a human rights perspective, the US Department of State’s Bureau for Democracy, Human Rights, and Labor, contends that the most significant human rights problems resulted from the lack of legitimacy of President Karzai’s last election, the widespread violence affecting civilians, the reports by UNAMA on torture and abuse of detainees by security forces, government corruption, and continued impunity for discrimination against women in Afghanistan.7

“Widespread official impunity for those who committed human rights abuses was a serious problem. The government was either unwilling or unable to prosecute abuses by officials consistently and effectively.”8

From an economic standpoint, according to the US Government Accountability Office report from September 20, 2011, approximately 90% of Afghanistan’s estimated total public expenditures were provided by international donors during 2006-2010, 62% of which were provided by the US government.9

Sustainability, whether it relates to economics, governance, the rule of law, or simply the capacity necessary to run forensic laboratories or courts of law, is still not a given in Afghanistan.

“Bearing Witness” in Afghanistan – Oral Tradition and Consensus Building

Since 2002, PHR IFP director Stefan Schmitt has collected a substantial amount of testimonial evidence relevant to mass graves in Afghanistan. Surprisingly, the testimonial recitations were so uniform in their accounts that it became evident that, in many cases, individuals would and could narrate an account as if they had been direct eyewitnesses to an event when, in fact, it often turned out that they had not. The questioning of such “witnesses” about their actual knowledge of the event often resulted in irritation or surprise at being questioned about the “truth” of the account. The general attitude surrounding such narrated events of social and political relevance is that “everyone knows that this is true.”

In Afghanistan, individuals “bear witness” to events. However, individuals who “bear witness” also bear a concomitant social responsibility toward the communities they represent. Giving testimony then, from an anthropological standpoint is not an individual initiative, but a social responsibility and frequently represents a de facto communal response. The act of “bearing witness” can be linked directly to the social identity and survival of a community. Traumatic events that impact entire communities, such as massacres, become defining moments. How these moments are defined is a function of reaching consensus. An example of such a consensus could include one in which the community survives as an entity through the cultural concept of resolution for the victims. The reaching of consensus by any given community may be, and often is, influenced by external factors, such as whether it would be politically or socially “safe” to relate an account in such a way that it would or could offend an opposing faction. Thus, the bifurcated practice and responsibility of “bearing witness” may often be result-oriented and, hence, of little or no evidentiary value in a judicial forum convened to examine the event at issue.

A good example of the Afghan consensus method stems from an interview conducted by Schmitt in 2008 concerning a massacre that occurred during the civil war in Kabul. During this massacre a large number of civilians were allegedly killed or disappeared and sexual violence was reportedly widespread. The meeting with survivors of the massacre had been arranged with the help of an Afghan human rights NGO at its office. The “testimony” was presented by a group of seven men, one of whom spent approximately 45 minutes relating the account of the massacre, the details of which were well-known among people in Kabul. The remaining group of men listened to the lengthy narration, and at

8. Ibid.
the end of the account each of the other six men nodded to the narrator, thus endorsing this account through the consensus of the group. A written statement, signed by the group of seven, was handed over.\textsuperscript{10}

Collecting testimonies in Afghanistan thus cannot be compared to societies with traditions of rationalism where verifiability is at the core of how individual rights and responsibilities are defined. This reality is tied to the fact that most Afghans have never had access to a stable and uniform judicial system. Sharia law, traditional customary law, and ethical codes are largely transmitted via oral tradition. The Quran itself is in Arabic, which is not understood by most Afghans, and is typically memorized.

This does not mean that Afghan institutions, such as the ANP, are not capable of collecting relevant testimony and evidence and otherwise investigating a crime to determine individual responsibility. An example is a case where the ANP investigated a reported massacre of 535 government soldiers by the Mujahedin forces in 1991. Testimonies were collected and photographs were taken of alleged perpetrators and the gravesite. The case was never brought before the courts, as it was considered to be “politically too sensitive.” In this case, as in many others, these political sensitivities overrode the consideration for the implementation of the rule of law as such implementation would have likely affected many in power against whom similar allegations had been lodged. The alleged main perpetrator in this case was reportedly killed after the investigation.\textsuperscript{11}

The lack of an integrated investigative and truth-finding process in many ways impacts everything in Afghanistan. Therefore, it is not surprising that the call toward national reconciliation in Afghanistan is in large part expressed by a demand from civil society groups for the “acknowledgement” of victims’ suffering. At the heart of this demand is not a need for rational fact and truth-finding, but rather the concept of traditional consensus building. This, in large part, is the result of a generalized distrust of governmental institutions which are perceived as corrupt and able to victimize much of Afghan society with impunity.

From a forensic and scientific perspective, the challenge in Afghanistan lies in bridging the gap between customary law, traditional consensus building, and the implementation of good governance. Steps can be taken to bridge a part of this gap and concurrently engender trust in the government through the use of objective, forensic science in identifying, documenting, and analyzing physical evidence of mass graves, missing persons, disappearances and other atrocities. The use of forensic science can constitute a fundamental first step in engaging Afghan civil society and its government in a realistic dialogue concerning past crimes in Afghanistan.

Victim and witness testimonies need to become part of a national process, rather than a function of the consensus narrative representing a specific community. Similarly, the Government of Afghanistan needs to find a way to integrate the country’s consensus building traditions into its rule of law and judicial efforts.

**Forensic Science and Human Identifications**

Identification of human remains in cases of mass fatalities, such as those resulting from natural disasters, accidents, and conflicts/human rights violations like those that occurred in Afghanistan, are often understood to require an immediate “humanitarian” response. Legal aspects of the identification of human remains are often marginalized in an effort to provide a quick response to grieving families, resulting in the tendency to identify human remains without following standard forensic practices.

To properly place the present HIDAGA for purposes of this report, the following explains the term “forensic human identification”:

\textsuperscript{10.}  Testimony. August 7, 2007.
\textsuperscript{11.}  Ministry of Interior - Afghan National Police case (2005).
Forensics is defined as the application of science to a legal context. In order for forensics to be sustainable and effective, it requires the existence of a sound academic and scientific community as well as a proper supporting legal framework.

Civil identity is generally the responsibility of a state (i.e., the state issues a birth certificate, which in turn grants the individual a name linked to rights and responsibilities within society and the state). In much the same way, the certification of death is a state’s responsibility, as the death of an individual has a legal impact on living family members such as a woman’s marital status, custody of children, inheritance, etc. This “death certificate” also generally includes the determination of cause and manner of death (natural, accidental, homicide, suicide) which can have further legal implications, such as the launching of a criminal investigation. Both birth and death certifications therefore are part of a state’s manner to exert the norms and regulations of the society it represents on the individual. This is the context in which a human identification effort has to be understood.

An integrated system of civil identity that includes birth, death, and marriage certificates plays an important role in the human identification process. In Afghanistan, there is a lack of uniform registration of civil identity. Birth certificates are not issued and are virtually non-existent; the same is true for death certificates. The national identity document, or tazkera, is likewise not issued routinely, but only on application by an individual. Most marriages are not registered either, although efforts are underway to increase access to marriage registration. The result of all of this is that many Afghans have no record of their civil identity, which presents a formidable barrier not only to identification, but to the exercise of their basic rights.

The determination of human identity is the result of the judicial decision to identify an individual as the one identified at birth — civil identity. A human identification process therefore needs to decide which civil authorities are involved in the determination of identity in Afghanistan.

The process of generating one’s civil identity is performed through forensic human identification. For forensic purposes, an identity in such a case can be based on various factors, ranging from documentary evidence (adoption papers), to fingerprints, to DNA (affiliation with biological parents). In some cases, a subjective identification based on recognition of the remains in a controlled environment by

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Case Study: Widows

It is unknown how many widows there are in Afghanistan but the number is believed to be one of the highest per population in the world. Widows face particular problems in situations where their husbands are missing or presumed dead. Article 326(1) of the Civil Code provides that where a person is missing for a period of four years, and believed to be dead, he or she will be deemed to be deceased by court order. Article 17(5) of the Shia Personal Status Law only applies where a husband has been missing for four years.

It should also be noted that for some people, obtaining this declaration might be very important. For example, the declaration would be important for a widow who wishes to remarry. Although the majority of Afghan women may never come into contact with the formal legal system or have the support and resources necessary to engage it, this provision may provide some relief. However, it must be acknowledged that not all people will want to have their loved one declared dead as they may still believe or hope that the person is alive, and in the absence of a body may not be prepared to seek such a declaration, preferring to keep the “disappeared” status. It is imperative that next-of-kin of the missing or disappeared person be able to choose which option is best for them and their family in the circumstances.
witnesses and circumstantial evidence (i.e., someone died in his bed surrounded by family members) is confirmed judicially by a forensic expert, usually the medical examiner.

The exact method of forensic human identification depends on the circumstances surrounding the death and the available evidence. In cases such as in Afghanistan where people have died in uncontrolled circumstances and human remains have been “lost” (e.g., people have gone missing), DNA identification plays an important role in establishing an individual’s identity. DNA is only one piece of evidence in the human identification process and needs to be evaluated along with all other evidence.

An identification effort in Afghanistan needs to integrate those authorities that can provide the determination of civil identity. Providing a civil identity through forensic identifications to the many who have disappeared in Afghanistan will be an important step toward remedying past human rights abuses.

Human Identifications And Transitional Justice

The Scale of the Missing and Disappeared Persons Issue in Afghanistan

Disappearances have occurred throughout Afghanistan in all phases of the past 35 years of conflict and unrest. Enforced disappearance typically involves an arrest and detention, accompanied by concealment of the whereabouts or fate of the disappeared person, placing that person outside the protection of the law. Enforced disappearance is a human rights violation, a violation of international humanitarian law and an international crime. Not all disappearances in Afghanistan over the past 35 years meet the international legal definition of an enforced disappearance. Many Afghans were not disappeared but went missing during military operations, fleeing their village or migrating to new areas. For the purposes of this report, a “disappeared” person is one who has been subject to conduct amounting to enforced disappearance. A “missing” person is one who, for any variety of reasons, is simply missing. It may eventuate that a “missing” person has in fact been disappeared but this may not always be the case.

Following the Saur Revolution, from April 1978 until December 1979, tens of thousands of Afghans are believed to have been disappeared by the PDPA government under the leadership of President Nur Muhammad Taraki and President Hafizullah Amin, both from the party’s khalq faction. Typically, uniformed PDPA officers or plain-clothed agents of the intelligence service, AGSA (da afghanistan gato satonki idara or Department for Safeguarding the Interests of Afghanistan), later KAM (kargari istikhbarati muassisa) or Workers’ Intelligence Department would arrest victims at home, transfer them...


14. Art 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, opened for signature 6 February 2007, UN Doc A/61/488 [entered into force 23 December 2010] defines enforced disappearance as: “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the state, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law” . Note that this definition does not extend individual criminal responsibility to non-state actors who carry out enforced disappearances. However, Article 3 obliges state parties to take appropriate measures to investigate and prosecute acts of enforced disappearances carried out by persons or groups acting without the authorization, support or acquiescence of the state. Afghanistan is a State Party to the Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002), which in article 7(2)(i) defines enforced disappearance as: “the arrest, detention, or abduction of persons by, or with the authorization, support or acquiescence of, a state or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.” This definition extends to non-state actors.
to prison or another place of detention, and subsequently execute them. Afghans from all over the country were transferred to the notorious Pul-e Charkhi prison on the outskirts of Kabul, from where they disappeared. Those targeted included anyone perceived to be an opponent of the new order — intellectuals, religious leaders, landowners, former government officials, members of the royal family, ethnic minorities, and later those of the rival parcham faction of the PDPA. PDPA authorities routinely denied family members information about the status of arrested people. Even today, more than three decades after the events, most families still do not know what happened to their loved ones, or whether they are alive or dead.

One woman from Kabul, who was 10 years old at the time, told the Afghanistan Justice Project (AJP) of the disappearance of her father and eight other relatives during this period. She and her family learned of her father’s arrest after a relative witnessed him being beaten and forced into a military jeep in 1979:

Since then, my father and his cousin have never returned. We did not search for them at first because we thought that he had gone to his cousin’s house. When we started searching him, some people said that the prisoners were in the Prime Ministry Prison, Sedarat, and others said that they are in Pul-e-Charkhi. We asked at several places and gave them our petitions, but they were not telling the truth. They were telling us, “They have not brought your relatives here.” After that Babrak Karmal got the power. Our relatives said then that the government has changed and as a result your father would be released along with other prisoners. But he is still lost. Since then, my mother has been a widow and suffered a lot of trouble raising us.15

After the Soviet invasion of December 1979, one of the first actions of the Soviet-backed PDPA regime under President Babrak Karmal was the creation of the KhAD (Khidamat-e Ettila’at-e Dawlati or the state Information Services), a secret police force modeled on the KGB and the Stasi, a brutal successor to KAM. Disappearances continued. Torture was endemic. Thousands of detainees were executed on the orders of a Special Revolutionary Court that lacked even the most basic of due process guarantees.16 At the same time as the persecution of perceived opposition continued in the cities, aerial bombardment and mass killings wiped out entire villages in the countryside. Millions of Afghans fled the country, creating the world’s largest refugee population. For the families of the disappeared, there was still no news. For the families of the executed, there was nobody to afford a proper and dignified burial. In the terror and panic of bombardment, mass killings and round ups of civilians for forced conscription, families frequently became separated, not knowing whether their missing family member had been arrested, conscripted, or killed, or had managed to seek refuge in another district, across the border, or in a third country.

A former detainee at Pul-e Charkhi prison, interviewed by Helsinki Watch in Peshawar in 1984, described it as such:

Under Babrak Karmal many of the prisoners have been killed…. I knew many of them. Silently, during the night, they were transferred for killing. Only a few persons are announced, the most famous. Sometimes they do not inform the person he is to be killed. At the trial the judges say, “We will deal with your case later.” Then they come and kill them. Thousands have been killed.17

During the brutal 1992-1996 civil war in Kabul, arbitrary arrest, detention, torture, rape, and summary executions were committed with impunity. All factions, including the Government of the Islamic State of Afghanistan (GISA), were involved in these violations. Many Afghans were killed or disappeared during this time.

16. Ibid, 34.
A man who was detained during factional fighting in Kabul in February 1993, but who managed to escape, told HRW:

Of the forty other people who were imprisoned with me, we never heard of them again, or found them. We have talked to their families: none of them was ever returned, and no one ever saw them again.\(^{18}\)

Arbitrary arrest and torture continued to be widespread under the Taliban, who took Kabul in September 1996. Some of those arrested were never seen again. The Taliban’s “signature crime” was its massacres of ethnic minorities, the mass graves of some of which have been discovered. A woman told the Afghanistan Research and Evaluation Unit (AREU):

My cousin disappeared during the Taliban time; he was about 13 years old when he disappeared. We just heard that he was imprisoned and was crying in prison. Then we do not know what happened to him, it is not clear whether he is alive or dead.\(^{19}\)

Disappearances did not end with the fall of the Taliban and the United States military intervention of 2001. Ongoing concerns have been expressed about detainees being held incommunicado at Bagram air base in Afghanistan and other detention facilities by US and Afghan authorities. The Taliban have also been accused of disappearances. A young man from Ghazni province told AREU:

My aunt’s son disappeared in the present period in 2008 and he worked with the present government. The Taliban decides that when some one person eats the bread of this government he will be killed, but we don’t know if he is alive or dead.\(^{20}\)

Despite the immense scale of the disappeared persons issue in Afghanistan, there has been little to no official acknowledgment of disappearances that have occurred throughout the conflict, nor any real effort to find the missing and disappeared or hold alleged perpetrators accountable.

**Overview of Transitional Justice in Afghanistan**

The transitional justice process in Afghanistan was marred from the outset by the failure of the Bonn Conference of December 2001 to address the country’s decades of conflict and mass human rights violations. As a result, many individuals who allegedly bear responsibility for war crimes, crimes against humanity, and egregious human rights violations have assumed or re-assumed positions of power from the local level right to the top echelons of government.

The first real attempt to address Afghanistan’s criminal past came in 2004 when the AIHRC, mandated by Article 58 of the Constitution to monitor, promote, and protect human rights, conducted a national consultation on the issue. The findings of the consultation were published in January 2005 in the AIHRC’s “A Call for Justice” report. The report found a strong demand for justice for past violations, with 76.4% of the 4,151 respondents expressing the opinion that bringing war criminals to justice would increase stability and bring security.\(^{21}\) On the subject of amnesty, 67% of respondents were opposed to amnesty of any kind, while 33% stated they would support a conditional amnesty in return for the truth.\(^{22}\)


\(^{22}\) Ibid, 21.
The AIHRC report led to the adoption of the Government of Afghanistan’s Action Plan on Peace, Reconciliation and Justice. The Action Plan consisted of five key actions:

1. acknowledging the suffering of the Afghan people;
2. ensuring credible and accountable state institutions;
3. truth-seeking and documentation;
4. promoting reconciliation and the improvement of national unity; and
5. establishing effective and reasonable accountability mechanisms.

The Action was launched in 2005 and was supposed to be implemented over the following three years. Unfortunately, the Action Plan was largely ignored by the Afghan government, and at its expiration remained almost entirely unimplemented.23

Despite express provisions in key actions 4 and 5 that there should be no amnesty for war crimes, crimes against humanity, and other gross violations of human rights, in 2007 the Afghan parliament passed an amnesty resolution purportedly granting blanket immunity to those involved in the conflict, including alleged perpetrators of these crimes.24 The resolution was amended so as not to foreclose individual claims, based upon the Sharia principle that only the victim can forgive, and that such forgiveness cannot be granted by the state.25 It was returned to the parliament, where again it was passed, however, under unclear circumstances. It was not gazetted as the National Reconciliation, General Amnesty and National Stability Law26 until November 2008 and again under unclear circumstances that saw it remain unpublished, or at least not public, until December 2009. Effectively, the law places the burden of pursuing justice on the victim in an environment in which there are no provisions/mechanisms for victims to safely approach the judiciary and demand investigations for past crimes. This law is not consistent with Afghanistan’s obligations under international law, as provided for in Article 7 of the Constitution.27


24. Art 3(1) of the law provides that “all political factions and hostile parties who were involved in a way or another in hostilities before establishing of the Interim Administration shall be included in the reconciliation and general amnesty program for the purpose of reconciliation... and enjoy all their legal rights and shall not be legally and judicially prosecuted.” Art 3(2) purports to extend this individuals and groups still in opposition to the government, provided they join the “process of national reconciliation” and respect the Constitution and other laws.

25. Art 3(3) provides that operation of arts 3(1) and 3(2) “shall not affect the claims of individuals against individuals based upon Haqullabd (rights of people) and criminal offences in respect of individual crimes.”


The Afghanistan Peace and Reintegration Program (APRP) has been underway since 2010 but has been plagued by controversy since its inception. The composition of the High Peace Council overseeing implementation of APRP has been heavily criticized as it contains many individuals accused of having “bloodstained hands.” The non-transparent nature of the process and the perception that it is benefiting criminals raise serious concerns as to its effectiveness. Even less transparent has been the Government of Afghanistan’s efforts to reach a political settlement to the conflict. The people of Afghanistan want peace, but many fear that negotiating with the Taliban will result in a loss of rights.

The results of the systematic failure to address Afghanistan’s culture of impunity through any meaningful transitional process are clear: ongoing armed conflict, insecurity, the continued widespread commission of human rights violations, endemic corruption, a government perceived by many as illegitimate, and a continued flow of people across Afghanistan’s borders seeking asylum. Until such time as the Government of Afghanistan acknowledges the truth of the egregious human rights violations that have taken place in the country over the past three and a half decades and takes real steps toward fostering a culture of accountability, the prospects for the country’s future remain dim.

In Afghanistan, there are a myriad of challenges to truth-seeking, including lack of political will from the government and the international community, ongoing conflict, ethno-political divisions, lack of literacy and education, and a history of oral tradition based on hearsay evidence rather than eyewitness testimony.

One question that inevitably arises across all truth-seeking efforts is that of “whose truth?” For any given scenario there can be multiple truths, and this is especially so in countries that have experienced decades of conflict and serious human rights violations. Despite these challenges, a number of efforts have been made to document war crimes and human rights violations, including those who were disappeared.

Examples of Existing Efforts to Document and Find the Disappeared

A number of organizations have been involved in documentation efforts in Afghanistan, although these have not always been made public. Such efforts have focused largely upon the 1978-2001 era and have included the following approaches:

**Mapping exercises:** documentation efforts that have sought to cover the entire 1978-2001 period, usually with a focus on patterns of violations. Examples include the Office of the High Commissioner for Human Rights (OHCHR) Mapping Report; the Afghanistan Justice Project’s Casting Shadows: War Crimes and Crimes Against Humanity 1978-2001 report; and the Afghanistan Independent Human Rights Commission’s Conflict Mapping Report.

**Documentation of particular phases/incidents:** the Human Rights Watch’s Blood Stained Hands: Atrocities in Kabul and Afghanistan’s Legacy of Impunity report, which documented just one year.


29. The PTRO study found that respondents were generally supportive of a political settlement, however, 40% felt that it would result in a loss of rights: PTRO, 50.

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— the Afghan year 1371 (March 1992-March 1993) — of the civil war in Kabul, or the Afghanistan Watch documentation project which looked at three massacres occurring in different provinces in different phases.

**Consultations:** projects in which communities were consulted on the legacy of conflict and human rights abuses, in which information on violations was also collected. For example, the AIHRC’s *A Call for Justice* report; the AREU “Legacies of Conflict” project; and the ACSF report *A First Step on a Long Journey: How People Define Violence and Justice in Afghanistan* (1958-2008).

**Gender-based documentation:** a focus upon women and girls’ experiences of the conflict and documentation of gender-based violations — for example, the UN Women Oral History Project.

**Arts-based documentation initiatives:** the Afghanistan Human Rights and Democracy Organization’s work engaging war victims and affected communities through participatory theatre and memory boxes.

**Media initiatives:** the Radio Azadi program “In Search of the Missing.”

**Technical initiatives:** the AFSO’s work advocating for the protection of mass graves from unlawful destruction and using the tools of forensic documentation to work toward determining the identity of the victims.

For more detailed information on each of these initiatives please see Appendix A.

All of these initiatives have involved documentation of disappearances in some form or another, to a greater or lesser extent. An important part of documenting the missing and disappeared is obtaining all the known pertinent information available about the individual’s identity and the circumstances of his or her disappearance. A number of the initiatives above have attempted to do this, though a standardized methodology has been lacking.

**Identifying the Missing, Disappeared, and Deceased Through Lists**

The compilation of lists of names of the disappeared or deceased, whether done by officials, local communities, or documenting organizations, can be a valuable source of documentation. However, care needs to be taken to avoid duplication and ensure the accuracy of these lists. Duplication can easily occur in Afghan communities due to the way Afghans are named. Many Afghans go by only one name and do not have a surname. In addition, people are generally given Islamic names, so there is not the breadth of names that may be found in other societies. These two factors mean that even in a small village there may be many individuals with the same name. For this reason it is important when compiling lists to include more identifying data than just the missing or deceased’s name.

There have been numerous efforts to compile lists of the missing, disappeared and deceased since 1978 in Afghanistan. Official and unofficial lists exist in many communities and in respect of many incidents of killings and disappearances. However, none have been comprehensive and balanced attempts aimed at reaching out to all Afghans to register their missing, disappeared, or deceased family members. Some lists have been made public in order to demonstrate the criminal actions of previous political actors, and others are local lists of victims compiled by affected communities. As there is no standard methodology for compiling such lists, and often important distinguishing information is not included, it leaves the accuracy of these lists open to doubt.

The following are some of the commonly known efforts. It needs to be emphasized that these examples are indicative only of the kinds of lists that exist in Afghanistan.

- 1978/79 – PDPA list of victims executed under Taraki reportedly contains 11,000-12,000 names in total.\(^{31}\)

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31. A stakeholder familiar with the period showed the authors of this report a copy of a list containing 4,785 names executed by the Taraki regime, believed to be part of a much larger list released by Amin in an effort to distance himself from his predecessor. On this list the deceased are numbered and the following information is provided: name; father’s name, profession; place; and the accusation against them which led to their arrest.
April 1979 – List of approximately 900 victims of Kerala massacre by PDPA in Konar province; total killed estimated as being up to 1,200.

February 1980 – Registration effort undertaken by the PDPA government, reportedly compiling a list of 25,000 missing persons. Registration was reportedly abandoned when it became apparent that so many people had been disappeared.

February 1993 – Afshar, Kabul list of 600-800 victims of Government/Shura-e Nazar/Jamiat and Ittihad forces during the Afshar massacre reportedly compiled by a “fact-finding commission” sent to the area later to establish the extent of the damage.

January 2001 – 178 identified victims of Taliban massacre in Yakawlang, Bamyan; total killed estimated as being up to 300.

The last example is worth noting. The AJP report contains lists of victims of the various mass killings in and around Nayak, the Yakawlang district center. The lists are divided according to location of the mass killing (of which there were several) and contain the following information about the victims: number identifying the victim; victim’s full name; father’s name; place of arrest; place of residence; age; and occupation. The inclusion of multiple identifiers for each victim ensures a certain degree of accuracy in the list and provides a model that should be followed in ongoing and future documentation efforts.

Case Study: “In Search of the Missing” (dar justoju-ye gomshoda-gan)

“In Search of the Missing” is a biweekly radio program broadcast on one of Afghanistan’s most popular radio stations, Radio Azadi. The idea for the program came from Zarif Nazar, a producer/correspondent at Radio Azadi, who was motivated by his own search for relatives missing as a result of oppression, conflict, and migration. His parents had fled oppressive Stalinist rule in what is now Turkmenistan and settled in Afghanistan in the 1920s/1930s.

“In Search of the Missing” first aired on February 13, 2004. It was originally designed as a weekly 15-minute program but due to its popularity and public demand, it has since evolved into a biweekly program at least 20 minutes long. The program airs on Wednesday (repeated on Thursday) and Sunday (repeated on Monday). People “in search of the missing” leave their message on an automated telephone line. Playback of these messages constitutes the program. Email and Facebook can also be used to convey messages. A typical message contains information about the missing person, where they are from, where they were last seen, and who should be contacted if anyone has any information. Between 25 and 40 such messages are played during each program.

The missing persons who are the subject of the program come from all periods of Afghanistan’s 35 years of conflict and unrest. It is not uncommon to have someone looking for a family member arrested and disappeared by the Taraki regime in 1978 alongside someone looking for a family member who went missing in 2012 after leaving Afghanistan in search of work or a better future.

“In Search of the Missing” is one of the most well-known regular radio segments on Afghan radio and has been very well received inside Afghanistan. There have even been some success stories, such as the family in Canada that found their father in Iran 15 years after his arrest by the Taliban in Herat; or the family who found their son and brother some 20 years after he was sent to the Soviet Union as a child. [Appendix B].

The fact that “In Search of the Missing” has become a very regular feature of the Afghan airwaves is testament to the need not only for a truth-seeking process about disappearances but also the need for human identification of those remains which have been found in the country’s many mass graves.
Legal Context of Forensic Medicine and Associated Challenges

Afghanistan has a pluralist legal system. While the Afghan state has had centralized code-based judicial institutions for over a century, efforts to impose them upon local communities with their own customary systems have always been met with opposition. Customary law is based upon a common cultural and ethical code that generates binding rules upon its members. It is estimated that 80-90% of disputes in Afghanistan are settled through the informal or "customary" justice system. It is therefore important to note the role that customary law plays in Afghan society, as these laws and practices can conflict with state law. State law is not always applied, and this needs to be kept in mind. This report however focuses upon state law and practice as this is the system applicable to human identifications.

The state justice system is undermined by the absence of universal application of formal laws. The lack of clarity, the inconsistency, and the overall ambiguity of the formal legal framework makes it difficult even for Afghan judges, lawyers, and prosecutors to understand and apply the law. For ordinary Afghans, there is virtually a complete lack of awareness, let alone understanding, of the law. A deep culture of impunity means that even where the law is known and understood, it is not implemented. This combination of deficiencies in the formal justice system makes it vulnerable to corruption.

Under Article 3 of Afghanistan’s Constitution, “no law shall contravene the tenets and provisions of holy religion of Islam.” Afghanistan’s laws need to be interpreted in light of this provision. Islamic law plays an important role in the Afghan legal system as most judges are trained in Sharia and use it in their interpretation of state law, as well as to “fill the gaps” in the law. Article 130 of the Constitution allows Hanafi jurisprudence to be used as such:

_In cases under consideration, the courts shall apply provisions of this Constitution as well as other laws. If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner._

International law

Article 7 of the Constitution of Afghanistan provides that “the state shall observe the United Nations Charter, inter-state agreements, as well as international treaties to which Afghanistan has joined, and the Universal Declaration of Human Rights.” Afghanistan is a state party to the core international human rights and international humanitarian law treaties outlined in Appendix C.

Of particular relevance to human identifications is the right to the truth, which has its origins in international humanitarian law, also known as the laws of war, and is also established in international human rights law.

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33. Barfield, 351.
36. The International Convention for the Protection of All Persons From Enforced Disappearance provides for the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person in its preamble and arts 18, 24(2)
The right of families to know the truth surrounding the fate of a missing family member is codified in Article 32 of Additional Protocol I of the Geneva Conventions. It is a norm of customary international law applicable to all parties in both international and non-international armed conflicts.

International human rights bodies have extended the right to the truth to the circumstances of serious human rights violations in general. In its study on the right to the truth, the OHCHR concluded that:

*The right to the truth about gross human rights violations and serious violations of human rights law is an inalienable and autonomous right, linked to the duty and obligation of the state to protect and guarantee human rights, to conduct effective investigations and to guarantee effective remedy and reparations. This right is closely linked with other rights and has both an individual and societal dimension and should be considered as a non-derogable right and not be subject to limitations.*

In recognition of this, the United Nations has proclaimed March 24 as the International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims. Further evidence of state practice is found in the prevalence of truth commissions or commissions of inquiry in the aftermath of conflict or periods of mass human rights violations.

The right to the truth has particular relevance in respect to enforced disappearance, as the denial of the truth of the disappeared person’s fate or whereabouts is an element of the violation. In its landmark *Velásquez Rodríguez v Honduras* case, the Inter-American Court of Human Rights held, with respect to enforced disappearance, that the duty to investigate continues as long as there is uncertainty about the fate of the person who has disappeared and that ‘the state is obligated to use the means at its disposal to inform the relatives of the fate of the victims and, if they have been killed, the location of their remains’. The European Court of Human Rights has held that the suffering caused to family members by a refusal to provide them with information about the whereabouts or fate of a disappeared person amounts to inhumane treatment.

Under the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, UN member states must not practice, permit or tolerate enforced disappearance; must criminal-
ize enforced disappearance under their domestic law; and must properly investigate alleged cases
of enforced disappearance. To date, Afghanistan has not taken appropriate steps to implement the
Declaration. Nor is it a state Party to the International Convention for the Protection of All Persons from
Enforced Disappearance which came into effect in 2010.

The scale of disappearances in Afghanistan over the past three decades, the need to prevent future
disappearances and the lack of formal acknowledgment or framework for addressing the phenome-
non are strong reasons why Afghanistan should take immediate steps implement the Declaration and
accede to the Convention.

The International Convention for the Protection of All Persons from
Enforced Disappearance

The Convention affirms enforced disappearance as a human rights violation and an international
crime. There can be no derogation from its prohibition. Under the Convention state parties are
obliged to take necessary measures to ensure that enforced disappearance is criminalized under their
domestic law. Although the definition of enforced disappearance contained in the Convention does
not extend to non-state actors, state parties are obliged to take appropriate measures to investigate
and prosecute acts of enforced disappearances carried out by persons or groups acting without the
authorization, support or acquiescence of the state. The Convention also codifies universal jurisdic-
tion in respect of enforced disappearance, prohibits secret detention; guarantees the rights of fam-
ily members to obtain information about detainees; and defines ‘victim’ not only as the disappeared
person but also as ‘any individual who has suffered harm as a direct result of an enforced disappear-
ance, guaranteeing their right to know the truth about the circumstances of an enforced disappear-
ance and the fate of the disappeared person. The Convention also provides for the establishment of a
Committee on Enforced or Involuntary Disappearances. The committee has a similar mandate to the
UN Working Group on Enforced Disappearances and can receive requests from family members, legal
representatives, NGOs and other interested persons that a disappeared person be ‘sought and found’.

Islamic Law

This section is not designed to be authoritative but rather to give a basic outline of what positions exist
in Islamic thought and jurisprudence on the use of forensic medicine and to provide a starting point for
discussion of these issues inside Afghanistan. The focus will be on autopsy and exhumation as these
are the two areas pertinent to truth-seeking and transitional justice processes.

46. Art 4.
47. Art 13(1).
48. Afghanistan is a state party to the Rome Statute of the International Criminal Court. The court has jurisdiction
over international crimes committed in Afghanistan after 1 May 2003, including enforced disappearance as a
crime against humanity under Article 7(1)(i) of the Statute. Afghanistan has been under preliminary examination
by the Court since 2007.
49. Art 1.
50. Art 4.
51. Art 2.
52. Art 3.
53. Under art 9, a state party is to exercise jurisdiction over the offence of enforced disappearance where it is
committed on its territory, by one of its nationals or where the victim is one its nationals: art 9(1). Where a
state party is unable to do so, it must extradite or surrender the alleged perpetrator to another state or to an
international criminal tribunal whose jurisdiction it has recognized: art 9(2).
54. Art 17(1).
55. Art 18.
56. Art 24(1) and (2).
58. Art 30(1).
Forensic medicine has been the subject of some controversy in Islamic jurisprudence. Traditionally dissection and autopsies were not allowed in Islam as they were considered disrespectful of human dignity. Later Greco-Roman medical texts were translated into Arabic and became accessible to Muslim doctors, but their influence has not been universal. Islam teaches that "judgment" is to be made by Allah and that even when evidence of wrongful killing could be obtained through examination of the body — for example, through autopsy — the matter should be deferred for divine judgment.\(^59\) Obviously this belief and practice is in contrast to much of the secular West where religion does not control the state in respect to such issues.

Advances in medicine and science since the Prophet’s time have been undeniably beneficial for humanity. This has prompted modern Islamic Scholars to consider how these “modern issues” should be interpreted and whether they are lawful practices for Muslims. If a particular subject matter is not dealt with or mandated expressly in the Qur’an or Hadith,\(^60\) Muslim jurists, or mufti, are required to consider it and issue a legal opinion, or fatwa. A fatwa is an advisory opinion only and is not considered binding. In order for a fatwa to have binding effect, it must be upheld by a judge in court of law. Short of such a legal ruling, however, a fatwa can produce a diverse range of opinions on any particular issue.\(^61\)

**Autopsy: Islamic Legal Opinions**

One opinion on the issue of autopsy appears to be that generally it is not allowed. Much of the reluctance to perform autopsies comes from a statement attributed to the Prophet Mohammad (hadith) that “to break the bone of a dead person is like breaking the bone of a living person.”\(^62\)

A secondary reason is the inevitable delay arising from performing an autopsy. Muslims should be buried within the shortest amount of time possible after death, usually within 24 hours. An autopsy inevitably delays burial significantly.

According to some schools of thought it is not permissible to dissect the body of a Muslim to carry out a postmortem, and that the person performing the autopsy is liable to pay compensation if an autopsy is performed.\(^63\)

However, there appears to be some modern support for autopsies in situations where the procedure is deemed to be in the public good (maslaha). This is the approach taken by the Council of Senior Scholars in Saudi Arabia (Sunni), which has issued a decree that permits autopsy in the following situations:

- To determine whether a crime has been committed and this caused the death
- To check whether there is an epidemic disease so that necessary precautions can be taken to prevent others being infected
- For educational and training purposes\(^64\)

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59. Email correspondence from an academic and sociologist of religion (Islam), 22 February 2013.
60. A narration recording the practice, saying, action, approval, recommendation or physical description of the Prophet Mohammad. The practices of the Prophet are known as sunnah.
As to the first two points, the Council ruled:

*With regard to the first and second categories, the Council deems them permissible in order to achieve and maximize many interests in the fields of security, justice, and protecting the community from epidemic diseases. The evil of violating the sanctity of a dead body is insignificant compared to the great public interest secured by this procedure.*

This endorses the earlier ruling of the Fatwa Committee at Al-Azhar, Egypt (January 1982) that post-mortem examinations could be held when necessary where: medical students learn from postmortems; if justice prevails through them; and if contagious diseases can be controlled through them. In such situations, the benefit of the procedure is felt to outweigh the detriment. Equally important to the idea of public interest overriding individual interest is that necessity overrides prohibition. It must be noted however that according to the traditionalist view, the public interest or good does not always equate to necessity and accepted grounds of necessity are likely to be limited. The public good cannot legitimize prohibited acts. Rulings on the public good could be viewed as a modernist extension of the necessity principle.

It is clear that autopsies are being performed in Islamic countries and that there is growing recognition of the importance of autopsies for social good and the pursuit of justice, both key tenets of Islam. Autopsies are being conducted in Muslim hospitals for scientific and legal purposes, especially in respect of murders, suicides and accidents. For example, in Malaysia, autopsies are mandatory in all cases where the cause of death is unknown. Following a decision of the National Fatwa Committee of Malaysia in 2006, the Office of the Prime Minister of Malaysia recently announced that the government will conduct “virtual” autopsies in selected hospitals on the basis that such virtual autopsies should be preferred for Muslims as they did not involve incisions of the body.

**Exhumations: Islamic Legal Opinions**

Exhumations are generally considered to be impermissible under Islamic Law. However, according to the Council of Senior Scholars in Saudi Arabia, exceptions can be made at the discretion of Islamic scholars where an exhumation is deemed necessary or in the public good (*maslaha*). An example might be with regard to mass graves where the bodies have been buried without proper ablution and proper prayers and are not facing the qibla. As a rule, burial in mass graves is not considered to be in compliance with Sharia. According to one expert, if the individual bones could be taken out and re-buried affording the victim a proper and dignified Islamic burial, that would be considered to be in

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65. Note that this approach can be criticized on grounds that it is more of a state approach to the issue and does not necessarily enjoy the support of more traditional schools of thought: Interview with Senior Lecturer, Sydney Law School, 15 March 2013, Sydney.

66. At a basic level, both Sunni and Shia schools agree on the principle of “necessity”: Interview with Senior Lecturer, Sydney Law School, 15 March 2013, Sydney.

67. Interview with two Supreme Court judges, 29 March 2011, Kabul.


71. The direction of Mecca.
compliance with Sharia. However, the hadith as to “breaking the bones of the dead is like breaking the bones of the living” also applies here. Care must be taken to ensure professional exhumation which respects the dignity of the deceased.

**Afghan Law and Practice**

**Forensic Medicine Law**

The Forensic Medicine Law[^73] is the primary legislation governing forensic medicine in Afghanistan. It provides for the establishment of the Department of Legal Medicine. The law was enacted under Article 31 of the Public Health Act[^74] “in order to arrange forensic medicine services and to better implement justice when a professional opinion is expressed on criminal and civil cases through judicial bodies to departments providing forensic services.”[^75] Under Article 2 of the law, the Department of Forensic Medicine operates on the basis of the following objectives:

- Provision of medical facilities to judicial bodies for finding out the truth
- Performance of forensic medicine skills
- Developing training and research programs

Forensic medicine specialists are obliged to observe a crime scene or exhumation of grave when requested by police, prosecutor, judge, or any other legal body with authority.[^76] They are also obliged to express an opinion on any examination or diagnostics related to forensic medicine.[^77] Forensic medicine specialists are authorized to assist with crime detection and obtaining evidence as per the “criminal code.”[^78] They are able to request additional information as required from other experts in the crime detection field, and to request further information on decisions made by police, prosecutors, judges and other legal bodies.[^79]

The examination of bodies is authorized under Article 18(2).[^80] Forensic medicine examinations are to be free and paid for by the Government of Afghanistan.[^81] Relevant medical institutes and physicians are obliged to cooperate with the Department’s Forensic Specialists when required.[^82]

Articles 21-24 deal with the contents and requirements of forensic reports. Under Article 24(2) autopsies are to be performed when requested by relevant bodies and with consent of the guardian of the deceased, but not in cases when that guardian is a suspect in the death of the deceased. Time limits for examination, diagnosis, and reporting are outlined in Article 25.

**Issues Affecting Implementation of the Forensic Medicine Law**

There are numerous issues concerning implementation of the Forensic Medicine Law and the LMD faces significant hurdles in properly carrying out its mandate.

[^72]: Interview with Senior Lecturer, Sydney Law School, 15 March 2013, Sydney.
[^75]: Forensic Medicine Law, art 1.
[^76]: Art 7. “Forensic medicine specialist” is defined in art 3 as “a medical specialist who has a credible degree in forensic medicine”.
[^77]: Art 6.
[^78]: Art 8.
[^79]: Art 10.
[^80]: Under art 18 the LMD is also authorized to examine live people, supportive documents, documents referred to forensic medicine, and negligence of medical staff using forensic medicine.
[^81]: Art 3.
[^82]: Art 5.
Firstly, most prosecutors and judges graduate from the Sharia faculty with a tradition of truth-finding based on witness accounts. As a result, there is a perception among some stakeholders that they do not value physical evidence and are largely unaware of the importance of it in the criminal process. The overwhelming majority of those working in the Afghan legal system do not understand the limits of or purpose for forensic medicine, and this is reflected in "impossible" requests, to wit: requests that desire information or results that are beyond the scope of forensic medicine. The LMD receives the majority of its requests from the police, prosecutors and judges who are seeking information outside the forensic medical realm, such as proof of a woman's virginity or the exact age of an accused, and the like. Despite numerous and repeated efforts by LMD staff to explain that forensic medicine cannot prove such things, those requesting such information continue to exert considerable pressure to produce these "impossible" findings. This causes frustration for the LMD and confusion on the part of those actors who misconstrue the limits of forensic medicine and view the failure to fulfill such requests as a lack of cooperation on the part of the LMD.

It should be noted that while some stakeholders opined that prosecutors and judges do not value physical evidence, the judges consulted for this report had a very different view. As one judge put it:

_In this era, testimony and confession is not adequate to reveal the whole truth. Corruption and confessions obtained under torture cause the truth to be ignored, and justice and human rights are violated. But the role of forensic medicine is very important because the suspect cannot object to or reject the outcome of forensic tests, and there will be no doubt before the judges, prosecutors and police._

Secondly, the reports produced by the LMD are often too complicated for judges to understand, especially given the judges’ lack of training in evidence and forensic procedures. This is despite express provisions in the Forensic Medicine Law as to what FMD is required to include in such reports in the first instance.

Thirdly, the LMD faces issues with corruption and political pressure. One form of pressure brought to bear on the LMD is the demand to produce specific results as requested by the individual making the request. This pressure could be exerted for any number of reasons, but typically it is done to cover up the commission of the crime or to ensure the desired outcome, being that an accused is either acquitted or convicted of a crime. In some cases, it is evident in the courtroom that such results have been produced as a result of external pressure and corruption. As one Supreme Court judge stated:

_The judge examines the findings of the prosecutor and also the findings of forensic medicine. If the judge finds that the findings are incompatible with the obvious then the judge will ask forensic medicine for a reasonable explanation. If the explanation is not reasonable those findings will be disregarded. For example, the LMD is required to provide an expert opinion in a murder case in which there are bullet holes in the victim’s body. The LMD for whatever reasons, threats, or corruption, states that in their opinion the person has died of natural causes. In such cases, the judge will disregard the opinion. If the opinion of forensic medicine is based on science it is very important for all of us [LMD, police, prosecutors, investigators, judiciary, lawyers, human rights activists, and officials] but if it is not based on science then it has no value._

LMD staff attempt to navigate around these external pressures. However, even if they are able to do so, corruption and political pressure often manifests both inside and outside the courtroom, thereby mitigating or obviating the forensic value of LMD’s work.

Fourthly, it is not uncommon to find that judges, prosecutors and police themselves do not follow the law, even violate it. One judge on the bench of the Kabul Zone 4 Court provided the following example:

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83. Interview with Kabul Zone 4 Court judge, 31 May 2012, Kabul.
84. Interview with Kabul Zone 4 Court judge, 31 May 2012, Kabul.
85. Arts 21-23.
86. Interview with Supreme Court Judge, 8 June 2012, Kabul.
Most of the time the police torture suspects to get confessions out of them. They don’t obey the principles of necessity and proportionality. Without any credible information they search people’s homes. Initially they arrest and detain the suspect without gathering adequate information and when they then can’t obtain relevant evidence they resort to torture to get their confession. This conduct indicates that they are not aware of the law and they don’t obey the principle of a fair trial.\(^{87}\)

For the LMD, non-implementation or a lack of understanding of the law can cause serious issues for its work. According to the Deputy Director of the LMD, there are no problems in terms of the content of the law preventing the LMD from doing its work, but it is the lack of implementation and understanding of the law which creates problems. This is particularly so with the police as “the majority of police do not understand methods of criminal investigation and when they go to a crime scene they cause many issues for the LMD.”\(^{88}\)

A Supreme Court judge provided an example of the difficulties in implementing the law when it runs counter to the wishes of powerful individuals who do not want the truth to be known:

> The majority of law enforcement agencies are aware of the law. But in some cases, due to negligence, intimidation or corruption, the law is not followed. For example, in a murder case in Zabul province, the judge ordered the body to be exhumed for examination to find out the truth. The conduct of the judge was legal, but the judge was denounced and later fired from his position.\(^{89}\)

Stakeholders expressed concern that corruption, threats, intimidation and lack of security are the primary reasons for non-implementation of the law. The Head of Afghanistan’s Independent Bar Association put it as such:

> The laws have to be implemented. Right now the law remains written in books. Even if it is used and implemented, it is only used on weak and poor people and that is it. The law will only be applied in practice when the powerful and rich people also follow and respect all of the laws. The laws in Afghanistan are only rarely followed and this situation will continue until such time as our society moves toward a law-obeying culture.\(^{90}\)

A fifth issue concerns inconsistencies in the amount of time granted to the different bodies involved in the legal process which causes problems for all of those involved. Police are given less time to conduct their investigations than prosecutors and LMD. This places enormous pressure upon LMD to produce examination results within a very short time frame.\(^{91}\) Such time pressures limit the ability of the LMD to conduct thorough examinations and to do its job properly and impartially.

A sixth issue is the huge disconnect between Kabul and the provinces in terms of knowledge, resources and human capital available. In the provinces there is very little to absolutely no understanding of how to collect and preserve evidence. Transportation of human remains and other forensic evidence from the provinces to Kabul creates issues in the chain of custody and storage. There are currently no procedures on how to transfer and store human remains and evidence from the provinces to Kabul, and no adequate vehicles to do so, which could certainly create legal and admissibility issues regarding the chain of custody of such evidence, not to mention storage limitations. Without further development of forensic capacity in regional centers, the validity of reports produced in or for the provinces will continue to be of dubious quality, which may mean that ultimately these reports should not be relied upon in court proceedings.

It is evident that there are numerous issues with the implementation of the Forensic Medicine Law, and that the LMD carries out its mandate in a challenging environment. There are a number of other legal provisions which are also important for human identification and these will now be briefly discussed.

\(^{87}\) Interview with Kabul Zone 4 Court judge, 31 May 2012, Kabul.
\(^{88}\) Interview with Deputy Director of LMD, 25 May 2012, Kabul.
\(^{89}\) Interview with Supreme Court judge, 8 June 2012, Kabul.
\(^{90}\) Interview with Head of the Independent Bar Association of Afghanistan, 5 June 2012 Kabul.
\(^{91}\) Interview with Deputy Director of LMD, 25 May 2012, Kabul.
Other Legal Provisions Relevant to Human Identifications

Article 391(1) of the Penal Code

Article 391(1) of the Penal Code\(^2\) criminalizes certain conduct in respect of graves. Despite the existence of this provision in the Penal Code, it is not currently being applied. It has however been applied during the government of Najibullah.\(^3\)

Although it does not appear to have been used in the case of destruction of a mass grave, according to one Supreme Court judge, the provision can certainly be applicable to mass graves. In such cases, a judge would decide, upon consideration of Sharia, whether the destruction of the mass grave falls within the “religious grounds” exception.\(^4\)

PHR spoke with Supreme Court judges who felt that a Presidential Decree on the issue of protection of mass grave sites could be a first step toward greater legal protection of these sites as “by logic it is tampering with evidence.”\(^5\)

Investigative Functions of Police

Article 134 of the Constitution provides that:

*Discovery of crimes shall be the duty of police, and investigation and filing the case against the accused in the court shall be the responsibility of the Attorney’s Office, in accordance with the provisions of the law.*

These responsibilities are detailed in the *Interim Criminal Procedure Code for Courts.*\(^6\)

Under Article 21(1) of the Interim CPC, police are duty bound to report all crimes of which they have knowledge to the Primary Saranwal\(^7\) within 24 hours of becoming aware of the commission of the crime.\(^8\) Under Article 29(1) judicial police have the role of detecting crimes, collecting evidence, and seeking suspects in the pursuit of justice. The Primary Saranwal can conduct investigations independently or with collaboration of judicial police.\(^9\) Under Article 23(2) the purpose of the criminal investigation is stated as:

...the establishment of the truth and in order to do so the Primary Saranwal shall extend his assessment to cover all facts and evidence relevant for establishing whether the crime has been committed and ascertaining who is responsible for it.

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93. Interview with Supreme Court judge, Kabul, 11 December 2012.
94. Interview with Supreme Court judge, Kabul, 11 December 2012.
95. Interview with Supreme Court judges, Kabul, 29 March 2011.
97. Prosecutor.
98. Under art 21(2) the duty to report crimes extends to public officers only where they become aware of the commission of the crime in the performance of their duties.
99. Art 23(1).
The Primary Saranwal "has the obligation to introduce the penal action for prosecution of all crimes, known directly by him or reported to him, committed in the territory of the District, unless otherwise expressly provided by law." 100

Although the Interim CPC is the Code currently being applied by Afghan Courts, it has been criticized, 101 and a new and more comprehensive Criminal Procedure Code has been drafted and sent to parliament, however at the time of writing it has not yet been tabled for discussion. 102

Although police have been attending mass gravesites and have engaged in efforts to ensure protection of these sites, the real burden of gravesite protection has fallen upon local human rights defenders. It would appear that police and prosecutors are not performing their investigative functions under the Code in respect of mass graves, despite the fact that they should be investigated and secured as any other crime scene.

**Autopsies and Exhumations in the Draft Criminal Procedure Code**

Article 50 of the Draft CPC regulates the performance of autopsies and the carrying out of exhumations. If implemented, this provision could contribute to the protection of mass graves and open the way for future human identifications. 103

Article 50(1) appears to provide for routine performance of autopsies by LMD in all cases of murder or suspected murder or suicide. This would be in line with modernist Islamic rulings discussed above as well as practice in other Muslim countries where autopsies are mandatory in suspected criminal cases. However as will be discussed in the section on autopsy practice in Afghanistan below, there is a great reluctance to perform autopsies in Afghanistan so it is unclear how this would be implemented.

**Examining the Body - Article 50**

The police, prosecutor’s office or courts shall transfer the murdered body, body of a person who appears to have been murdered or committed suicide to the forensic medicine office for autopsy

- The autopsy of body shall be conducted in presence of the police or prosecutor.
- When conducting an autopsy, in addition to the pathologist, the physician who recently treated the deceased can be requested to attend. The Pathologist shall prepare the autopsy report in accordance with the conditions set forth in Article (55).
- A buried body shall be exhumed only after receiving an order from the authorized court and then shall be submitted to the office of forensic medicine. Before the court issues the order of exhumation, it shall seek the views of relevant experts, and the statements of the police and the litigants.
- In provinces where there is no forensic medicine office, the forensic medical examinations will be conducted by a specialist assigned by the Public Health Administration in the relevant province.

100. Art 22(1).
101. See, for example, Michael E Hartmann and Agnieszka Klonowidcka-Milart, Lost in Translation: Legal Transplants without consensus-based adaptation in Whit Mason (ed), The Rule of Law in Afghanistan: Missing in Inaction (Cambridge University Press, 2011) 27.
102. Interview with Head of Curriculum at Ibn Sina Private University who sat on the drafting committee, 30 March 2013, Kabul. Article 90 of the Draft CPC sent to parliament outlines the obligations of “police and the NDS officer in charge” in detecting and investigating crime. Under this provision police and the NDS officer in charge are to inspect the crime scene and observe the situation where the crime has occurred; identify the type of crime, perpetrator and victim; detain any suspects and conduct appropriate searches; collect evidence in and around the crime scene and evidence related to the perpetrator; record the statements of suspects, victims and crime scene witnesses and identify anyone at the crime scene; take required measures to protect the crime scene; and any other necessary measures. Police and the NDS officer in charge are obligated to report the crime to the prosecutor within 24 hours.
103. Given that the Draft CPC is yet to be debated by parliament, it is conceivable that the version sent to parliament [and which has been provided to the authors of this report] will undergo further amendments as part of the legislative process.
Article 13 of the Draft CPC provides for a statute of limitations, with criminal cases to be dismissed ten years from the time of occurrence, extending to 20 years in the case of crimes punishable by life imprisonment and 25 years for crimes punishable by death.

A number of stakeholders, including judges, expressed that a statute of limitations for crime applies in respect of “ordinary crimes” only. They suggested that by implication, war crimes and crimes against humanity are considered to be “extraordinary crimes” thereby invoking judicial discretion to waive the statute of limitations in order to prosecute these kinds of crimes, if they were to be tried. As one judge put it:

If the sensitivity of the crime remains an issue and the parties follow the case, it can be prosecuted.
But if the sensitivity of the crimes is decreased and the parties involved are not interested to proceed, in that situation it is considered to be ten years.

Another judge explained how the statute of limitations was fair, given what he considered was a need for timely justice. However, “having said that, war crimes, crimes against humanity and genocide are exceptions and the statute of limitations only applies to ordinary crimes.”

It should be noted that Afghanistan is a state party to the Convention on the Non Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity which obliges state parties to ensure that statutory or other limitations shall not apply to the prosecution and punishment of war crimes and crimes against humanity and that, where they exist, such limitations shall be abolished.

Amnesty

The National Reconciliation, General Amnesty and National Stability Law, discussed above in the section on transitional justice, purportedly grants a blanket amnesty to all those involved in ‘hostilities’, subject to individual claims. Given the current state of impunity and insecurity, and considering the lack of any form of witness protection in Afghanistan, it appears unlikely that victims would bring individual claims.

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104. Interview with Supreme Court judge, Kabul, 8 June 2012; Interview with Kabul Zone 4 Court judge, Kabul, 31 May 2012; Interview with military prosecutors, Kabul, 28 May 2012.
105. Interview with Supreme Court judge, Kabul, 8 June 2012.
106. Interview with Kabul Zone 4 Court judge, Kabul, 31 May 2012.
108. Art 4. The International Convention for the Protection of All Persons from Enforced Disappearance states that where a domestic statute of limitations is in place, time is to run from the moment when the offence of enforced disappearance ceases, that is when the whereabouts of the disappeared individual become known: art 8(1)(b).
Legal Gap Analysis

Legal issues form the foundation of a human identification effort. The major issues described above are identified and broken down into the “As-Is” describing the current situation, the “To-Be” describing the desired goal to be reached, and the “Steps for Moving Forward” which are the recommended steps that need to be taken to reach the desired goal.

<table>
<thead>
<tr>
<th>1. Recognizing Enforced Disappearances</th>
<th>Steps for Moving Forward</th>
</tr>
</thead>
</table>
| **As-Is**                              | Afghanistan should take immediate steps to give effect to the United Nations *International Declaration on the Protection of All Persons from Enforced Disappearance*.1  
Afghanistan is not a state party to the *International Convention for the Protection of All Persons from Enforced Disappearance*.2  
A law criminalizing enforced disappearance should be drafted, passed and implemented.  
Both of the above are accompanied by formal acknowledgment by the Government of Afghanistan of:  
◦ The scale of disappearances in Afghanistan over the past 35 years  
◦ The suffering that enforced disappearances have caused for millions of Afghans  
◦ Remembrance of the victims  
◦ A commitment to ending impunity for enforced disappearance. |
| **To-Be**                              | Afghanistan should accede to and implement the *International Convention for the Protection of All Persons from Enforced Disappearance*.  
Enforced disappearance is criminalized under Afghan law. |

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### 2. Missing Persons Law

#### As-Is

Article 53 of the Constitution provides that: “The State shall adopt necessary measures to regulate medical services as well as financial aid to survivors of martyrs and missing persons…”

In June 2005, the Action Plan on Peace, Reconciliation and Justice\(^3\) drafted by the President’s office and AIHRC with technical support from UNAMA, was unveiled at the Peace, Reconciliation and Justice Conference in The Hague on June 6-7, 2005. However, President Karzai did not formally launch the Action Plan until December 2006.

This plan called for the following key actions:
- Acknowledgement of the suffering of the Afghan people
- Ensuring credible and accountable state institutions
- Truth-seeking and documentation
- Promoting reconciliation and the improvement of national unity
- Establishing effective and reasonable accountability mechanisms

#### To-Be

Afghanistan will have a comprehensive law on missing persons to address the obligations of the state and the rights of the missing and disappeared.

Such a law will:
- Address the legal status of family members, in particular wives, children and dependents, arising from the lack of defined status of missing persons by granting an official status of disappeared under which the missing person is not declared dead, but rather as absent for legal purposes. After the requisite statutory period for having the missing person deemed dead has passed, families should have the option of having the person deemed deceased by a court as provided for in Afghan law, or having the person declared “disappeared.”
- Address issues arising from a person being declared absent, such as rights to administration of property, custody of children, eligibility for benefits and remarriage.
- Define the scope of any effort going into the search for missing and disappeared persons in Afghanistan.
- Provide a mechanism for official registration of missing and disappeared persons and provide families with documentation of this.
- Recognize families’ right to the truth.

#### Steps for Moving Forward

The Afghan government, with the support of AIHRC and international experts, needs to draft and implement a law on the missing and disappeared.

Such a law should follow the comprehensive guide to the obligations of the state provided by the International Committee of the Red Cross: *Missing Persons: Handbook for Parliamentarians* (Handbook No. 17) 2009, ICRC, Inter-Parliamentary Union.\(^4\)

The Afghan Government will:
- Acknowledge that families have a right to know the truth about the fate of their missing loved one and establish appropriate procedures for access to any information that might exist, such as through government records or archives
- Acknowledge that it is the responsibility of the state to provide material, financial, psychological, and legal support to families of missing and disappeared persons

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## 3. Truth Seeking

**As-Is**

Numerous organizations have been involved in efforts to document the scale of the conflict in Afghanistan by interviewing witnesses and surviving victims. Such efforts have focused largely upon the 1978-2001 era. Some of these interviews have been released publicly.

It is necessary for the AIHRC Conflict Mapping Report to be published as it provides an important first step toward determining the scope of the missing persons issue in Afghanistan.

There is a need to determine and define the scope of the missing persons issue in Afghanistan. This is needed before any planning toward registering missing persons and the identification of human remains in mass graves can be carried out.

**To-Be**

There will be a comprehensive strategy on the release and use of the Conflict Mapping Report.

### Steps for Moving Forward

The AIHRC will convene a working group to define a comprehensive strategy for the release of the report. This will include:

- Civil society organizations
- MoJ - Human Rights Unit
- International donor community
- UNAMA

This comprehensive strategy will:

- Identify key conditions which need to be met for a release of the Conflict Mapping Report
- A follow-up strategy for the preservation and use of the data collected, in the event that the Conflict Mapping Report cannot be published at present.
### 4. Civil Identity

In Afghanistan a person’s identity is affirmed through their paternal kinship line and their geographic and ethnic ties. People in Afghanistan without formal identity documents affirm their identity by citing their paternal lineage and their place of birth. Most Afghans are unsure about their date of birth.

There is the need for legal provisions for the implementation of an effective process for the registration of civil identity, accessible to all Afghans. Currently, tazkera registration is done by application. Applicants are obliged to travel to the district of their paternal ancestors’ birth to obtain a tazkera, even though they may not have been born there, may never have been there, and the family may have been living elsewhere in Afghanistan for generations.

There is a need for legal provisions and a formal process by which birth and death certificates are issued for all Afghans.

There is a need to expand current efforts to legally register marriages in Afghanistan.

<table>
<thead>
<tr>
<th>Steps for Moving Forward</th>
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<tbody>
<tr>
<td>The Department of Legislative Drafting (taqni) of the MoJ will recognize the need to develop legal provisions within Afghan law for the effective implementation of:</td>
</tr>
<tr>
<td>• Birth certificates</td>
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<td>• Death certificates</td>
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<tr>
<td>• Civil identity registration</td>
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<tr>
<td>The Government of Afghanistan should continue to expand the availability of marriage registration centers throughout the country.</td>
</tr>
<tr>
<td>The LMD will issue death certificates for all medico-legal death investigations carried out by the LMD. LMD reports will declare a cause and manner of death when possible.</td>
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<table>
<thead>
<tr>
<th>To-Be</th>
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<tbody>
<tr>
<td>There will be legal provisions to create an effective and verifiable civil identity system accessible to all Afghans.</td>
</tr>
<tr>
<td>There will be legal provisions creating the means by which death and birth certificates are issued as part of Afghanistan’s civil identity system.</td>
</tr>
<tr>
<td>Marriage registration will be standard practice in Afghanistan.</td>
</tr>
<tr>
<td>The LMD will implement the issuance of death certificates for all investigated deaths. These will declare a cause and manner of death when possible.</td>
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</tbody>
</table>

Available at: [http://www.theadvocatesforhumanrights.org/4Jun20046.html](http://www.theadvocatesforhumanrights.org/4Jun20046.html).
### 5. Provision for the Protection of Mass Graves

<table>
<thead>
<tr>
<th>As-Is</th>
<th>Steps for Moving Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is provision in the <em>Afghan Penal Code</em> in Article 391(1) which makes it an offense to destroy or demolish a grave or tomb without religious grounds. This provision can also be applied to destruction or demolition of mass graves. However, this provision in the <em>Penal Code</em> is not currently being applied. There are <em>hadith</em> which state that the breaking of the bones of a dead person is like breaking it when the person is alive.</td>
<td>AFSO will conduct awareness-raising workshops for judges, prosecutors, police and civil society in all major centers on the importance of implementing Article 391(1) and protecting mass graves.</td>
</tr>
<tr>
<td><strong>To-Be</strong></td>
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<tr>
<td>Article 391(1) of the <em>Penal Code</em> will be applied in cases where mass graves are destroyed or demolished without religious grounds. As per the law, the Afghan judiciary will implement the imposition of sanctions against those responsible for destroying mass graves and the improper treatment of human remains.</td>
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### 6. Provision for Autopsies

<table>
<thead>
<tr>
<th>As-Is</th>
<th>Steps for Moving Forward</th>
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<tbody>
<tr>
<td>There is diversity of opinion among Islamic scholars on the legality of autopsy in Islamic jurisprudence. There are <em>hadith</em> which state that the breaking of the bones of a dead person is like breaking it when the person is alive. This has been interpreted as autopsies not being allowed except on grounds of strictly construed necessity. Due to the <em>hadith</em> on the breaking of bones, there is a reluctance to perform autopsies in Afghanistan. Legal provisions for routine autopsies are found in a number of other Islamic countries. The <em>Forensic Medicine Law</em> provides for autopsies where requested. The <em>Draft Criminal Procedure Code</em> appears to provide for routine autopsies in all cases of suspicious deaths. There is controversy over the practice of dissections for educational purposes.</td>
<td>Launch a consultative process on clearly defining within the law when and under what circumstances autopsies are to be performed, taking into account cultural and religious norms. Such legal provisions need to be in accordance with international standards such as the Minnesota protocol. This will be done through a series of workshops bringing together the following: ◦ LMD ◦ Justice sector stakeholders ◦ PHR ◦ Experts from other Islamic countries with legal provisions for routine autopsies</td>
</tr>
<tr>
<td><strong>To-Be</strong></td>
<td></td>
</tr>
<tr>
<td>Autopsies should be performed as a matter of routine as per Afghan law and in every case of suspected homicide.</td>
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</table>
## 7. Draft Criminal Procedure Code

### As-Is

A new draft of the CPC has been recently submitted to Parliament. While the draft code calls for mandatory autopsies in cases of suspicious deaths, which is to be welcomed, it has several areas where implementation may prove problematic. For example:

- In addition to outlining the role of the police officer, the CPC requires the NDS officer in charge to have an equal role in investigating crimes including securing the crime scene, collecting evidence and interviewing witnesses.
- The new legislation if adopted as-is will require medical examination to be carried out by individuals of the same sex as the suspect, accused or victim.

### To-Be

Laws regarding the collection and testing of forensic evidence will facilitate the effective use of forensic science in Afghanistan including:

- Clear separation of roles and responsibilities in investigations.
- Need for adequate staff from both genders.

### Steps for Moving Forward

Prior to implementing the new CPC, the content will be reviewed by both national and international forensic practitioners. The practitioners will provide suggestions to enhance the likelihood that the criminal procedures will be effectively implemented.
Forensic And Technical Context Gap Analysis

Background on the Process of Identifying Human Remains

Historically, the identification of human remains following a mass fatality has been made through exhaustive investigative efforts (such as collecting and verifying eye witness testimony) combined with careful anthropological examinations.\footnote{109}

More recently, with the advent of robust DNA profiling techniques, DNA identifications have become more prevalent in human identification efforts.\footnote{110} Because of the recent popularity of forensics, it is becoming the identification method expected by families. The process of human identification following a mass fatality is complex and involves many forensic scientific disciplines. DNA is just one tool in the identification toolbox.

In general terms, the identification process involves the recovery of human remains, the collection of identifying characteristics from the human remains (postmortem information), the collection of identifying characteristics of the individual who is presumed deceased (antemortem information) from surviving relatives and friends, and the comparison of this antemortem information to the postmortem information in order to identify the human remains. This process is explained in figure 1 below.

\textit{Figure 1 - The Human Identification Process}

\footnote{109. In Afghanistan, as with many developing countries, the lack of sophisticated medical treatments and reliable records makes the use of dental and medical information for identification virtually impossible. Additionally, obtaining fingerprints from decomposed remains can be particularly problematic and while techniques are available, it is not a common form of identification for human remains from mass graves.}

\footnote{110. Lessons Learned from 9/11: DNA Identification in Mass Fatality Incidents, National Institute of Justice, 2006.}
Maintaining the Integrity of the Evidence in Human Identifications

As human identifications are inherently forensic operations, it is critical to properly maintain the evidence that is collected. Maintaining integrity of the evidence is referred to as “chain of custody,” in the US, and is the meticulous handling and documentation of a forensic sample to avoid later allegations of evidence tampering or misconduct. Properly maintaining sample integrity prevents loss or deleterious change to the sample and creates a record to prove the reliability of the results. This documentation includes the name of the persons involved in the analysis or transfer, the time and date the action takes place, locations from which the evidence is being transferred from and to where, a description of the evidence and any comments regarding as to why the evidence is being moved, or what the analysis process involves. Maintaining the integrity of the evidence also includes strict adherence to written and validated procedures. While on the surface this may seem trivial, it is critical to the introduction of evidence into a court of law and is often overlooked in emerging societies. The development of written protocols and procedures are a critical foundation to the development of sound forensic science operations.

Field Operations/Body Recovery

The first step in the recovery process is the identification of the graves. Typically this is done through eye-witness testimonies conducted by trained investigators. The proper location and recovery of human remains is critical to the correct identification of human remains. It is essential that mass graves are properly identified, documented and exhumed. It is tempting for families and well-intentioned individuals to unearth human remains. However, only properly trained individuals who will maintain proper documentation of the handling of the evidence (human remains and associated forensic evidence) should perform exhumations. This ensures a proper chain of custody can be established and maintained and also ensures that the scene and exhumation process can be fully reconstructed. Improper exhumations, such as the disarticulation of intact skeletal structures can turn a relatively simple identification effort into a very complex and time-consuming undertaking, thus negatively impacting the entire identification effort.111

Morgue Operations

Once the human remains have been exhumed they are taken to a mortuary facility for the forensic analysis. This is known as the postmortem examination. On a very general level the postmortem examination includes:

- Determining cause and manner of death
- Determining gender, age, stature, handedness (right or left handed), ethnic affiliation, as well as other characteristics that can be used to compare with antemortem information
- Collection of DNA samples from the human remains
- Collection of any associated evidence, such as clothing, personal belongings and documents, as well as evidence of what led to the individual’s death, such as projectiles from firearms
- Entering information collected during the postmortem examination into a computer program for later comparison

111. For example, if a properly trained forensic anthropologist or archaeologist exhumes a skeleton as a whole unit, it can later be articulated for analysis by a forensic anthropologist in a laboratory. This way only one bone in the body can be sampled for DNA testing and the single DNA profile will represent all bones in the skeleton. If the body is not exhumed properly and skeletons are disarticulated, multiple DNA samples will need to be tested, resulting in an arduous task given that there are 206 bones in the human body. Ensuring articulation in the exhumation process therefore greatly simplifies the DNA testing as it reduces the number of samples that need to be tested.
**Reporting the Missing and Presumed Deceased**

In order to make identifications, the postmortem information must be compared to antemortem information collected from the friends and family of the presumed deceased. Often, family members do not know whether their loved ones have died, are being detained and is incommunicado somewhere, or has fled the area (for example, to start a new life in a different country). Many times, individuals will believe that their family member has perished and will report their family member to local authorities as missing and potentially deceased. This is common in countries where such reporting structure and confidence in the authorities exist. This is not the case in Afghanistan.

Generating an accurate list of the deceased can be time consuming and is often overlooked in mass fatality responses, despite it being critical to the success of the identification effort. Often there are multiple agencies supporting the identification of missing individuals. This results in multiple lists of the missing. Multiple lists cause confusion and can leave huge gaps in the identification effort as families feel that they have provided information, when in reality, the information has not been passed on to the correct entity in charge of the identification effort. If lists are combined there are often duplicate cases that need to be carefully compared and combined, if appropriate, into a single case. All individuals who are reported missing must be located alive or potentially identified among the dead. Therefore, there must be close coordination between a missing persons investigation and the identification effort. Close coordination ensures that when someone is found alive, their name is promptly removed from the list of the missing and presumed dead, and the case is closed. Ideally there should be a single list of the reported missing. The reported missing names should be vetted to make sure:

- The person is believed to be deceased (as opposed to temporarily missing such as through being internally displaced)
- Each individual is represented only once on the list (often people will be reported missing several times by different family members)
- Each individual is given a single unique Reported Missing (RM) number
- No two individuals have the same RM number
- There is an indication of which individuals are related to each other (see family pedigrees below)
- All antemortem information is associated with the correct RM number

**Collection of Antemortem Information about the Deceased**

Antemortem information is information about what a person was like during life. This helps create a biological profile, which can be compared to postmortem information from the human remains. Antemortem information is collected through interviews with family members and friends of the missing person and includes things such as gender, height, weight, occupation, clothing, hair color, and medical history.

In addition, photographs and identification documents may be collected to corroborate the information provided by the family. Such documents include medical records, fingerprint records, and dental records.

Forms need to be used to record antemortem information to ensure that it is consistent and complete. Standard forms are comprehensive and can take several hours to complete. These forms need to be designed for the specific circumstances in which a human identification effort is carried out.

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112. Often names are used to identify the individuals and a name is not a unique identifier.
113. One’s occupation may have an effect on bone morphology. For example, a heavy laborer may have a different bone morphology than a businessperson who spends most of their time behind a desk.
114. Example forms can be found at: [http://www.interpol.int/INTERPOL-expertise/Forensics/DVI-Pages/Forms](http://www.interpol.int/INTERPOL-expertise/Forensics/DVI-Pages/Forms) and [http://www.dmort.org/forms/index.html](http://www.dmort.org/forms/index.html)
The final step is to collect DNA reference samples from family members. These DNA reference samples can be as simple as a buccal swab (cheek swab) or several drops of blood. This DNA from family members then is compared with DNA from the recovered human remains to see if there is a family relationship to any of the recovered human remains.

**DNA Testing and Identifications**

The DNA analysis process can be broken down into several phases:

*Phase I – DNA Collection:* During this first phase, DNA is collected from the human remains that are recovered (either bone or tissue, if remains are still fleshed). This usually happens in a morgue or a forensic laboratory. DNA samples are collected from family members who suspect that they have lost a loved one. Often times, victim or family assistance centers are established where relatives of victims can come to provide antemortem information and donate DNA samples. During the DNA sample collection process it is very important that a system is set up, which guarantees that samples are not mixed and are preserved correctly. This follows chain of custody procedures, which utilize bar coding and computer systems, as well as generating paperwork documenting exactly how the sample was handled and by whom.

*Phase II – DNA Profiling:* During this phase, the DNA samples from both the living relatives and the deceased victims are sent to a DNA laboratory that is capable of extracting DNA from the samples collected in Phase I. DNA is extracted from the bone, tissue, or blood, and profiles are generated. The DNA profiling process involves a number of steps that must be performed exactly according to internationally recognized protocols. The DNA profiles generated by the laboratory need to go through an exhaustive check to make sure that they pass quality requirements, are interpreted accurately, and are valid.

*Phase III – DNA Profile Matching:* During this phase, DNA profiles of the relatives who reported a missing person and donated a DNA sample are compared to the DNA profiles of the human remains that were recovered. In general, this is done by trained geneticists in the DNA laboratory with the assistance of computer programs designed to compare, search, and evaluate whether DNA profiles are related biologically to each other.

*Evaluation of the Profile Matches and Reporting* – Once potential matches between DNA profiles are identified, they are further examined by comparing the antemortem and postmortem information for a set of human remains with a DNA profile match to make sure that all data is consistent. If there are any inconsistencies the data is further investigated and ideally resolved. A statistical evaluation is performed on the DNA profile match, typically incorporating a formalized consideration of investigative information. Often there will be a statistical threshold that must be met before reporting matches. A DNA identification report will be issued once all of the relevant data, statistical calculations and information about the case have been reviewed, typically by multiple DNA analysts. This DNA report provides the medical examiner, or the entity in charge of making the identification, with the DNA information regarding specific human remains. The deceased will then be officially recognized as dead and a death certificate will be issued in that name. In Afghanistan, an identification should technically be made by the LMD.

*Repatriation of the Remains to the Family*

After the official identification, specially trained staff will notify the family, remaining sensitive to the psychosocial, cultural, and religious needs of the family. Families are handed the identified human remains and any items that may have been associated with the remains when they were recovered.

The transfer of the human remains from the identification effort to the family may take place during a special ceremony and often times in locations specially designated for this purpose. Families typically will have many questions and the identification effort staff needs to be prepared to accurately answer
these clearly and with the necessary sensitivity. This generally requires staff trained on the scientific process involved in the human identification effort, as well as trained to address the psychosocial needs of the families.

**Overview of Current Forensic Practices in Afghanistan**

Autopsies are not performed as a matter of routine. Autopsies have to be requested and in the absence of a request there will be no autopsy. There are three types of “authority” that can request an autopsy be performed: the family of the deceased; the prosecutor; and the police.¹¹⁵

The difference in Islamic scholars’ opinions on the permissibility of dissection or autopsy as part of medical training is also reflected in practice in Afghanistan. The majority of Sunnis appear to be against dissection whereas it has been allowed in the Shia tradition.¹¹⁶ Dissection is currently not undertaken in the Medical Faculty at Kabul University due to a belief that there should be no dissection of human bodies in Islam.¹¹⁷ Relevant training is done on plastic models.¹¹⁸ This situation persists despite the fact that dissections have previously been allowed in Afghanistan.

Institutions wishing to include dissections as part of their medical curriculum may not always be allowed to do so. One example is Cheragh University and Hospital, a private university in Kabul founded approximately five years ago. The university wrote a letter to the Ministry of Higher Education (MoHE) requesting permission to dissect human bodies, however, upon referral of the matter to the MoJ, the request was denied due to “cultural sensitivities.”¹¹⁹ As a result, a purpose-built dissection room and equipment is not being used. Instead, the university relies upon videos of dissections to teach its students. The University has considered taking its students to Iran to expose students to dissection. ¹²⁰ At the time of writing, Kabul University is also seeking permission to perform dissections, but has not yet been able to do so.¹²¹

The issue has been brought to the Ulema Council in Afghanistan to be discussed at the national level with the aim of resolving whether and in what circumstances autopsies should be performed in Afghanistan. However, at the time of writing there has been no progress on this issue.¹²²

To date there have been no scientific exhumations of mass graves conducted in Afghanistan under national authorities. Currently there is no capacity inside the country to undertake an exhumation of a mass grave according to international best practice standards.

According to a cleric from Khatam Al Nabein University, from a religious point of view there is no problem with conducting exhumations in cases where the body has been buried for longer than 30 years. In the specific case of a mass grave, it is felt that certain steps need to be taken before conducting an exhumation. Of critical importance is the need for consultation with the Ulema council and involving the local community in the process unofficially.¹²³

¹¹⁵. Interview with Supreme Court judges, 29 March 2011, Kabul.
¹¹⁶. Interview with representative of Medical Faculty of Kateb University, 24 July 2011, Kabul; Interview with representative of Khatam Al Nabein University, 24 July 2011, Kabul.
¹¹⁷. Interview with medical students, 14 July 2011, Kabul; interview with Dr Mustafa at Kabul Medical University, 12 July 2011, Kabul.
¹¹⁸. Interview with Dr Mustafa at Kabul Medical University, 12 July 2011, Kabul.
¹¹⁹. Interview with Dr Barmak, Acting President Academic Vice Chancellor, Cheragh University, 16 July 2011, Kabul.
¹²⁰. Ibid.
¹²¹. Interview with Dr Makarim Naseri, Dean of Medical Faculty of Khatam Al Nabein University, Kabul, 3 December 2011.
¹²². Interview with Dr Makarim Naseri, Dean of the Medical Faculty of Khatam Al Nabein University, Kabul, 3 December 2011.
¹²³. 24 July 2011, interview with representative of Khatam Al Nabein University.
An assistant professor for forensic medicine at Ali Abad Hospital (University), while reiterating the importance of identifying human remains in mass graves, opined that limited forensics resources would be better spent on the living.\textsuperscript{124}

In the provinces there is very little to no understanding of how to collect and preserve evidence.\textsuperscript{125} Each province has “medico-legal” doctors but in reality these doctors are not carrying out their mandate, nor are they adequately trained. They come under regular hospital administration, and due to a lack of resources combined with the stigma of working with the dead in Afghanistan, no one is performing standard autopsies (or forensic pathology).\textsuperscript{126} The situation is slightly better in Herat and Nangarhar as the LMD has been able to open field offices there. The Herat office is funded by the Provincial Reconstruction Team Provincial Reconstruction Team (PRT) and the Nangarhar office by the Government of Afghanistan. These two locations were chosen as the first field offices due to the existence of a pool of competent staff in these locations. Plans to open offices in all provinces have not yet come to fruition. With this limited capacity in the field, the LMD in Kabul must handle most of the work in the entire country.

Due to the lack of resources, nationally-led “modern day” forensic evidence collection and testing is virtually non-existent in Afghanistan. For example, the LMD uses outdated procedures for blood alcohol and toxicology testing and in general forensic science has yet to form an integral part of judicial inquiry.

**Forensic And Technical Gap Analysis**

The identification and repatriation of human remains following a mass fatality is a complex and lengthy process involving many different forensic disciplines. To date, with the exception of the limited exhumation conducted in 2002 by PHR and the exhumation of a single set of skeletal remains during PHR’s training in 2010, there have been no scientifically-conducted exhumations of mass graves in Afghanistan.

Following their visits to Afghanistan, PHR’s International Forensic Program team of experts conducted an analysis of gaps to identify the needs and requirements for implementing sustainable forensic human identification capabilities on a national level in Afghanistan.

This has been particularly challenging in Afghanistan, as some of the basic resources and capacities necessary for the identification of human remains from mass graves, and those missing and disappeared, have yet to be developed. The authors of this report realize that Afghanistan’s challenging security issues also impede unhindered development efforts, including the elaboration of the present gap analysis report.

The gap analysis is presented and organized in the following tables, each of which addresses stakeholders that would form part of a human identification effort:

**Overarching Issues:**

These are issues which generally affect the development and implementation of a human identification effort in Afghanistan and need to be addressed at a high level of government, both in Afghanistan and on the level of international donors.

\textsuperscript{124} Interview with Dr. Jodgari, 19 July 2011, Kabul.
\textsuperscript{125} Interview with representative of CID, MOI, 27 March 2011 Kabul.
\textsuperscript{126} Interview with representative of Legal Medicine Department, 24 March 2011 Kabul.
**Universities in Afghanistan:**

As the backbone for emerging scientists, the universities play a critical foundational role in the development of sustainable forensic sciences in the country.

**Ministry of Interior – Criminal Investigation Department & Department of Criminal Techniques (DCT-Forensic Laboratory):**

The MoI needs to play a significant role in securing evidence of mass graves and treating them within Afghan law as crime scenes.

**Legal Medicine Directorate (LMD):**

Located under the MoPH, the LMD is the governmental agency responsible for medico-legal examinations. It needs to determine the cause and manner of death and be able to provide for the scientific identification of human remains.

**Afghan Forensic Science Organization (AFSO):**

This organization was formed in 2011 by members of the CID, the Afghan National Police Academy (ANPA), the LMD, the AIHRC, and various civil society organizations as a result of a six-week training course by PHR on evidence and crime scene documentation and forensic anthropology. It began with the scientific documentation of mass graves in Afghanistan.

Each issue is identified and broken down into the “As-Is” describing the current situation, the “To-Be” describing the desired goal to be reached, and the “Steps for Moving Forward” which are the recommended steps that need to be taken to reach the desired goal. While some of the steps for moving forward are specific, others are more general. Some of the steps for moving forward that are very general and lack specificity are because the issues under discussion are significant undertakings and are dependent on other fundamental questions to be resolved first, such as overall security and stability in the country.
### Overarching Issues

<table>
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<tr>
<th>1. Psychosocial Support for Families</th>
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<tr>
<td><strong>As-Is</strong></td>
<td><strong>Steps for Moving Forward</strong></td>
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<tr>
<td>There is a need to establish mental health services to ensure families of the missing and disappeared receive appropriate psychosocial support.</td>
<td>The Afghan government will establish mental health services to support the psychosocial needs for victims of the conflict. The first step will be to task the MoPH to:</td>
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<tr>
<td>◦ Currently there is no one organization responsible for providing psychosocial support to family members of the missing</td>
<td>◦ Develop a strategic plan for mental health services</td>
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<tr>
<td>◦ Grieving families are demanding information about the loss of their missing and disappeared relatives</td>
<td>◦ Identify resources necessary to modernize mental health support in Afghanistan</td>
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<tr>
<td>◦ Providing psychosocial support is complex and mental health staff need specific training to be effective</td>
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<tr>
<td><strong>To-Be</strong></td>
<td><strong>To-Be</strong></td>
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<tr>
<td>The right to enjoy the highest attainable standard of mental health services in Afghanistan.</td>
<td>Citizens will feel safe and secure when reporting a missing person as part of the human identification effort.</td>
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<tr>
<th>2. Safety and Security of Families Providing Information on Missing Family Members</th>
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<tr>
<td><strong>As-Is</strong></td>
<td><strong>Steps for Moving Forward</strong></td>
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<tr>
<td>There needs to be provisions to guarantee the safety and security of citizens reporting information on missing persons, including witness protection.</td>
<td>Establish specific security guidelines for the human identification effort and create an environment where families of the missing and disappeared have the confidence to safely report a missing person.</td>
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<tr>
<td><strong>To-Be</strong></td>
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<tr>
<td>Citizens will feel safe and secure when reporting a missing person as part of the human identification effort.</td>
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### Education and Training

**As-Is**
To be sustainable, a human identification effort must be staffed with personnel who have the appropriate education in science and are trained in forensics.
- Individuals are bright and eager to learn but years of isolation have resulted in scientists woefully lacking in the knowledge and skills to be on par with the rest of the world.
- Judges, prosecutors, attorneys, scientists and medical professionals, who play a key role in forensics, need a sound university education and access to current textbooks and scientific literature, computers, equipment and supplies.

There is a US Army-led initiative to provide basic technical training on forensic testing (including DNA collection) via an effort at the US-built Justice Center at Parwan (JCIP) facility located at the US Bagram military base. There are three separate buildings that comprise JCIP:
- Courtroom and housing for visiting Afghan judges who sit over trials
- Offices and housing for visiting prosecutors who prosecute trials at the facility
- Forensic training laboratory with:
  - Firearms & toolmarks
  - Latent prints
  - Documents and media exploitations
  - Biology/DNA
  - Forensic photography

To date, forensic training programs have been:
- Based on unrealistic expectations of prerequisite educational levels in the basic sciences
- Focused on achieving short-term goals primarily designed around donated equipment
- In need of an educational approach which includes bolstering and developing basic university skills in science

The lack of properly managed forensic laboratories, with properly maintained equipment and adequate supplies, has made it difficult for forensic technicians to practice and master their newly learned skills. It is also difficult to secure and retain personnel to be trained for forensic laboratories that have an acceptable level of scientific education and background. As a consequence, international training initiatives have had limited success.

### Steps for Moving Forward
Establish a long-term training strategy to include:
- Appropriate security for international trainers
- Educational foundations in the respective disciplines for trainees
- Ensuring that trainees have access to their own equipment and supplies so they can practice what they have learned
- Budgets, supplies and resources for staff to conduct proper internal practice, validations and training
- Long-term mentorships between trainers and trainees for troubleshooting and follow-up support
- Support provided for equipment sustainability and functionality
Besides training in operations (such as collecting evidence) there is a need for mentoring in the important aspects of managing and sustaining operations including budgeting, maintenance, implementation of validated written protocols and procedures, and training of staff. For training to be effective there is a need for adequate security for international trainers.

**To-Be**

The government will ensure there is a strategy to:
- Ensure adequate security for international trainers to provide effective training on forensics in Afghanistan
- Create opportunities to attract and retain professionals with the necessary education and scientific background to be trained in forensics
- Have properly maintained and operated forensic laboratories
- Ensure there are trained forensic scientists who can generate accurate testing results

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<th>4. Perception of Forensics in Afghanistan</th>
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<tr>
<td><strong>As-Is</strong></td>
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<tr>
<td>There is a need to ensure that the public and the Afghan justice system understand forensic science and view it as credible.</td>
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<tr>
<td>- While there is some limited understanding of forensic science among prosecutors, judges and attorneys in Afghanistan, practical experience on the application of science within the law has been limited. A practical understanding on the capabilities and limitations of forensic science yet has to develop.</td>
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<tr>
<td>- The public needs to understand that forensic science can be an important tool to determine the facts of what transpired in a crime providing evidence to convict the guilty and also importantly exonerating the innocent.</td>
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<td>- Autopsies are perceived to be against Islamic religious norms, as bodies are to be left intact and washed prior to burial.</td>
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<tr>
<td>- Students at the Medical Faculty do not perceive forensic pathology as a viable career choice or one which will give them gainful employment. Students reported that there is a stigma attached to working with the remains of the deceased.</td>
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<tr>
<td>- Afghan society traditionally establishes truth through witness testimony. There is a need to establish science as an independent and objective means to verify and discover fact.</td>
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<tr>
<th><strong>Steps for Moving Forward</strong></th>
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<tr>
<td>Conduct forensic science education and awareness campaigns and truth seeking to increase knowledge and understanding for:</td>
</tr>
<tr>
<td>- Judges, prosecutors, and attorneys</td>
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<tr>
<td>- ANP officers and crime scene units</td>
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<td>- The general public and families of the missing</td>
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**To-Be**

Forensic science in death investigations will be understood and accepted as an essential step in determining fact.
### 5. Support for Equipment Maintenance

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<th>As-Is</th>
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| Sophisticated instrumentation and equipment have been donated to laboratories and law enforcement agencies. However, most appear to have broken down since there is no earmarked funding for equipment maintenance. | International donors will do the following when making equipment donations:  
° Ensure strategic planning has been conducted appropriately with ongoing budgets for sustained operations  
° Obtain commitments from equipment vendors for ongoing equipment troubleshooting and maintenance contracts  
° Verify that equipment users have been properly trained on routine maintenance |
| **To-Be** | |
| Equipment and instrumentation will be installed with resources and budgetary provisions for equipment maintenance in place. | |

### 6. Resources and Budgeting

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<th>As-Is</th>
<th>Steps for Moving Forward</th>
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| There is a need for Afghanistan to sustain itself financially. According to the US Government Accountability Office report from September 20, 2011 approximately 90% of total Afghanistan’s estimated total public expenditures was provided by international donors during 2006-2010, 62% of which were provided by the US government. A human identification effort will require the allocation of significant resources for personnel, equipment, supplies, DNA testing and long-term storage. Currently the forensic organizations in Afghanistan do not have adequate resources and budgets for even daily operations. | Establish an international strategy for identifying necessary support, while Afghanistan develops efficient means of sustaining government operations.  
° Identify and allocate the necessary resources for a continued development of forensics and science in Afghanistan.  
Continue with the effort to implement decentralized budgeting.  
° Government agencies will work with outside experts to draft ongoing budgets that are realistic to the services that the organization provides |
| **To-Be** | |
| Afghanistan will have the resources it needs to sustain the necessary personnel, equipment, supplies, DNA testing and long-term storage for its human identification effort. The Afghan government will implement a decentralized budgeting process for its individual governmental institutions. | |
### 7. Managing Family Expectations

**As-Is**
There is a need to have provisions in place to properly manage the expectations of families in regards to truth seeking efforts or attempts to identify the human remains of mass graves. There is a need for formal communication procedures and informational documents for the families.

**To-Be**
The Afghan human identification effort will provide accurate information to families. A public information campaign will have established policies and procedures for interacting with families.

<table>
<thead>
<tr>
<th>Steps for Moving Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>A human identification effort of human remains from mass graves will develop a public information campaign complete with written materials to manage the expectations of families of the missing and disappeared by:</td>
</tr>
<tr>
<td>◦ Reviewing similar brochures for relevance²</td>
</tr>
<tr>
<td>◦ Developing written informational material that is appropriate for the level of education of the families of the missing and disappeared, as well as more broadly impacted communities</td>
</tr>
<tr>
<td>◦ Testing and evaluating the information prior to wide-scale dispersal</td>
</tr>
<tr>
<td>◦ Evaluating and updating the material as needed</td>
</tr>
</tbody>
</table>

**Steps for Moving Forward**
- Develop procedures and policies for interacting with families that include:
  - Documenting what was said to the family, when and by whom
  - Answers to commonly asked questions
  - A process for appropriately addressing nonstandard questions

Develop a training program for staff interacting with families, including role playing as needed.

### 8. Antemortem Data Collection

**As-Is**
There is a need for standardized written policies and procedures governing the collection of antemortem data and the interaction with families.

**To-Be**
Antemortem data collection will be comprehensive and appropriate to the identification effort. The data will be collected in such a way that it can be effectively used in the identification process, including electronic comparison with postmortem data.

The human identification effort will have an investigative unit whose members are trained in antemortem data collection.

Antemortem data collection procedures and protocols will be written and implemented.

Antemortem data collection will be centralized and designed to be effective in the identification process when comparing this data with postmortem data collected from human skeletal remains from mass graves.

<table>
<thead>
<tr>
<th>Steps for Moving Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>The human identification effort will adopt procedures and policies for the collection of antemortem information from families. Staff will be trained to follow written protocols to:</td>
</tr>
<tr>
<td>◦ Conduct investigations</td>
</tr>
<tr>
<td>◦ Collect and secure antemortem data</td>
</tr>
<tr>
<td>◦ Provide families with information on the identification effort</td>
</tr>
<tr>
<td>◦ Implement a secure database system which will allow for the comparison of antemortem with postmortem data to assist in the identification of human remains</td>
</tr>
</tbody>
</table>

**Steps for Moving Forward**
- Develop a training program for staff interacting with families, including role playing as needed.

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Table 2. See: [https://www.findthemissing.org/documents/Identifying_Victims_Using_DNA_Family_Guide.pdf](https://www.findthemissing.org/documents/Identifying_Victims_Using_DNA_Family_Guide.pdf)
### 9. Reported Missing List

**As-Is**

The number of missing and disappeared individuals is unknown. There are some lists of missing and disappeared persons, but there has yet to be a coordinated effort to establish the truth on how many people are missing and disappeared.

There is a need for a civil identity system as it is a challenge to establish comprehensive and accurate lists of missing and disappeared persons.

**To-Be**

An accurate list of the missing and disappeared will be generated to determine the scope of the missing persons effort.

- While a precise assessment of the total number of missing and disappeared can be difficult to obtain, it is important to determine a realistic number.
- Number of missing and disappeared will be used for planning and resource allocation and statistical analysis of DNA testing results.

**Steps for Moving Forward**

Assign an individual from the human identification effort to head the missing and disappeared persons database. This will help to establish an accurate estimate of the number of missing and disappeared.

- Lists of missing should contain at minimum the following information:
  - Number identifying the victim – a reported missing number
  - Victim’s full name
  - Father’s name
  - Place of arrest/circumstances under which they went missing
  - Place of residence
  - Approximate age
  - Occupation

### 10. Use of Internationally Recognized Procedures

**As-Is**

The government organizations responsible for providing forensic services need to be able to adhere to international standards due to lack of resources.

**To-Be**

Human identification efforts will follow internationally accepted guidelines for the use of DNA in mass fatality operations.

**Steps for Moving Forward**

Afghan forensic organizations will follow protocols and procedures. Human identifications in Afghanistan will consult and integrate into its operations the following standards and guidelines:

- ISO/IEC 17025:2005 and LAC-G19
- US FBI’s Scientific Working Group on Disaster Victim Identification (SWGDVI)
- Recommendations Regarding the Role of Forensic Genetics for Disaster Victim Identification (DVI), DNA Commission of the International Society for Forensic Genetics (ISFG), 2007
- Disaster Victim Identification Guide, Interpol, 2009
- Guidelines for Mass Fatality DNA Identification Operations, AABB, 2010

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Table 4. [https://www.ilac.org/documents/g19_2002.pdf](https://www.ilac.org/documents/g19_2002.pdf)

Table 5. [http://www.swgdvi.org/](http://www.swgdvi.org/)


Table 7. [http://www.interpol.int/INTERPOL-expertise/Forensics/DVI](http://www.interpol.int/INTERPOL-expertise/Forensics/DVI)

Table 8. [http://www.icrc.org/eng/assets/files/other/icrc_002_4010.pdf](http://www.icrc.org/eng/assets/files/other/icrc_002_4010.pdf)

# 11. Body Recovery - Crime Scene Management and Forensic Archaeology

**As-Is**

There is a need for crime scene security, properly trained and experienced forensic archaeologists and crime scene and evidence technicians. This will help prevent the tampering with and/or the loss of evidence and information on the context from which human remains are exhumed.

In some instances, mass graves have been bulldozed and destroyed due to construction efforts, excavated without proper experts in an attempt to rebury and honor the dead, or allegedly were removed in the attempt to destroy evidence.

There is a need for forensic exhumations conducted by staff trained in forensic anthropology and archaeology to maintain the integrity of individual skeletal remains and avoid commingling and destruction of bones.

**To-Be**

Mass grave sites/irregular burials of human remains will be treated as crime scenes and evidence will be protected accordingly.

Bodies will be exhumed in a manner that retains all forensic evidence necessary for both identification and investigative efforts and making dignified burials according to Afghan laws, customs and religious traditions possible.

**Steps for Moving Forward**

The MoI will adopt a standard response to mass graves which will ensure that mass graves are secured as crime scenes. Provisions will be made for exhumations of mass graves with proper expert support. Expertise is required to ensure the collection of forensic evidence necessary for both identification and judicial purposes.

# 12. Body Recovery - Evidence Collection and Storage

**As-Is**

Evidence and skeletal remains exhumed from mass graves require long-term storage to allow for forensic analysis. There is a need for a long-term solution to:

- Preserve evidence at mass graves
- Standardize and coordinate long-term storage for exhumed remains and physical evidence (such as personal effects)

**To-Be**

An independent human identification effort will have staff trained in mass grave exhumations and evidence recovery and storage. There will be dedicated storage for evidence and human skeletal remains from mass graves.

**Steps for Moving Forward**

Before exhumations begin, the human identification effort will secure both refrigerated long-term storage for exhumed human remains, and dry evidence storage for physical evidence associated with human remains. International experts will be consulted to determine the type, location and extent of storage necessary to support the identification effort.
### 13. Collection of Postmortem Information - Medico-Legal Examinations of Human Remains

**As-Is**
Afghanistan needs to possess the capacity, facilities, equipment and supplies to deal with medico-legal examination of human skeletal remains from mass graves according to internationally recognized standards (Minnesota Protocol).

There is a need to establish protocols and procedures to govern the medico-legal examination of human remains such that meaningful postmortem information can be collected.

**Steps for Moving Forward**
The Afghan government will make the necessary resources available for a human identification effort of human remains from mass graves.

**To-Be**
The human identification effort will have access to the necessary resources in staff, facilities, equipment, and supplies to conduct postmortem examinations of human remains according to international standards.

### 14. DNA Testing

**As-Is**
To date there have been no DNA samples collected and there is no DNA testing capability within Afghanistan. Department of Criminal Techniques (DCT) staff have had some limited training through international initiatives, but do not have a functioning laboratory nor the necessary skills to operate a DNA laboratory. LMD staff have expressed interest in establishing a DNA laboratory.

In order to manage family expectations, DNA samples should not be collected in a widespread manner until a comprehensive and viable human identification effort plan is developed.

The identification of human remains from mass graves will need long-term robust forensic DNA laboratory capabilities with staff trained in DNA analysis and comparison methods. Such a nationwide human identification effort will need to be able to provide DNA testing for all human skeletal remains from mass graves as well as all families of reported missing and disappeared persons. The DNA testing for such a human identification effort could be instrumental in developing long-term robust forensic DNA profiling capabilities in Afghanistan.

**Steps for Moving Forward**
The Afghan government should develop a strategic plan for implementing DNA profiling capability. This plan will:
- Evaluate the current impediments and future forensic DNA needs
- Make recommendations for long-term coordinated forensic DNA efforts following international best practices.

This plan will include:
- Common mission & vision
  - Stakeholders’ needs
  - Scope
  - Education
  - Research
  - Operational Requirements:
    - Projected type and number of samples
    - Required turnaround times
  - Goals
  - Objectives:
    - Staffing
    - Equipment
    - Supplies
    - Procedures
    - Data and sample tracking tools
    - Accreditation
    - Reporting of findings
    - Budgets
    - ISO 17025 /ILAC G19 Accreditation
  - Identify needs for additional advanced training

**To-Be**
Afghanistan will have the capacity to carry out meaningful forensic DNA testing to support the human identification effort and other forensic initiatives.

There will be a long-term robust forensic DNA laboratory with staff trained in specialized DNA analysis and comparison methods.

There will be a nationwide human identification effort able to provide DNA testing for all human skeletal remains from mass graves, as well as all families of reported missing and disappeared persons.
Prior to any DNA sample collections the human identification effort should develop standard written procedures for the collection of DNA samples. The procedures should include:

- Information provided to the donor on how the sample will be used
- Collection forms that include proper authorization (informed consent)
- Steps to maintain sample integrity (chain of custody) and privacy of the donor family
- Standard answers for commonly asked questions such as:
  - What will happen to the samples?
  - How long the testing may take?
  - What will happen if an identification is made?
  - Why might an identification not be made?
- Directions for how to address other questions/concerns the family may have

## 15. Identification of Human Remains

### As-Is

There needs to be a formal system of civil identity in Afghanistan, which includes birth and death certificates. Human identifications are limited to objective means, such as family members identifying a body, or circumstantial evidence, such as identifying associated personal items, or documents.

In the great majority of instances there are no dental, medical, or fingerprint records to assist in the identification of unidentified human remains.

There is a lack of the resources and capacity needed to carry out human identifications based on scientific methods, such as identifications through dental and/or medical records, fingerprints, or DNA analysis.

### To-Be

Human identifications will be scientific and supported by DNA analysis. DNA analysis will support the human identification effort of human skeletal remains from mass graves.

### Steps for Moving Forward

The Afghan government will recognize the need for a formal civil identity system. See Legal Gap Analysis #4 Civil Identity.

As human identifications of human remains are the responsibility of the LMD, it will be provided with the appropriate resources to implement scientific human identifications.

A human identification effort of skeletal remains from mass graves will be provided with the appropriate resources to generate human identifications with the support of DNA analysis.
### 16. Repatriation of Human Remains

<table>
<thead>
<tr>
<th>As-Is</th>
<th>Steps for Moving Forward</th>
</tr>
</thead>
</table>
| There is a need to identify human skeletal remains to repatriate the remains to their respective families.  
  - In instances where mass graves are removed (see above #12), remains are not exhumed properly in order to be given a dignified burial according to Afghan laws, customs and religious practices. | The Afghan government will take responsibility for the repatriation of human remains from mass graves to their families when possible.  
  The Afghan government will provide for a dignified burial of human remains according to Afghan laws, customs and religious practices. |

<table>
<thead>
<tr>
<th>To-Be</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>As part of a missing persons law, it will be an obligation of the Afghan government to repatriate human skeletal remains from mass graves upon identification. Those that cannot be identified will be given a dignified burial according to Afghan laws, customs and religious practices.</td>
<td></td>
</tr>
</tbody>
</table>
### General Academic Standards

**As-Is**

Kabul University has a Medical University, under which the Forensic Science Department is located. There are no provisions for a specialized career path in forensic pathology. One course is taught as “forensic medicine” for 5th year medical students.

There is a Department of Archaeology and a Department of Ethnology under the Faculty of Social Sciences. Physical anthropology is not offered.

Syllabi for the Medical Faculty, or the Social Sciences Faculty (under which the Archaeology Department falls) are not available to students and therefore we do not know what courses are required for these careers. Courses offered are posted at the beginning of each semester.

Generally, there are few textbooks in Dari, and English textbooks are often outdated. Primary access to textbooks by students is via the internet, where PDF versions of current textbooks in English are available. Textbooks which are most accessible are those written in Farsi coming from Iran.

Leading private universities with medical schools are:
- **Cheragh University** (founded 2008 around an existing private hospital) - 270 medical students
- **Kateb University** (founded 2007) - 180 medical students
- **Khatam Al Nabein University** (founded 200 by Shia Cleric Ayatollah Mousseni) - 120 medical students

**To-Be**

The universities will be able to educate students for future roles in forensic science disciplines.

There will be specialized training in forensic disciplines specifically addressing:
- Using science to document facts
- Use of experimental controls
- Documentation
- Chain of custody
- Preservation of evidence
- Presenting scientific concepts to the public and in court
- Ethics
- Budgets
- Laboratory operations/management

### Steps for Moving Forward

The MoHE will conduct strategic planning to outline a roadmap for developing educational programs that will support forensic operations. This forensic educational strategic plan will include:

- Mission
- Vision
- Stakeholders and needs
- Long term
  - Strategic goals/objectives
  - Strategy for reaching objectives
- Short term
  - Goals and objectives
  - Action items
- Key performance indicators
- Financial assessment /budget

For each of the goals/objectives the MoHE will conduct action planning to include:

- Desired results
- Mitigation strategy for potential barriers to success
- Resources requirements
- Implementation plans
- Monitoring and evaluation of progress
### 2. Facilities and Equipment

<table>
<thead>
<tr>
<th>As-Is</th>
<th>Steps for Moving Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Attempts were made to set up a basic DNA educational training laboratory under the Forensic Science Department at Kabul University. While the laboratory has some equipment, it is not complete and does not have the necessary supplies. This laboratory has yet to be completed.</strong></td>
<td><strong>Conduct and document a complete inventory of existing equipment during the strategic planning. This will include equipment:</strong></td>
</tr>
<tr>
<td>In 2010 the laboratory was taken over by the LMD and renamed the “National Research Center for Legal Medicine”. In 2012 though, this laboratory was then reintegrated into the Forensic Science Department of Kabul University.</td>
<td><strong>Name</strong></td>
</tr>
<tr>
<td>There is a need to have practical anatomy laboratory classes offering dissections of human bodies to medical students in Afghanistan. Currently, anatomy is taught exclusively via lectures, textbooks, and if available, with plastic models.</td>
<td><strong>Function</strong></td>
</tr>
<tr>
<td>Attempts are underway at some private universities to make dissections available to students via trips to Iran, where it is allowed. The need for dissections in practical labs has reportedly been brought before the Ulema Council to allow this practice at Universities in Afghanistan.</td>
<td><strong>Number</strong></td>
</tr>
<tr>
<td>The Library at Kabul University reportedly has 200,000 books.</td>
<td><strong>Purpose</strong></td>
</tr>
<tr>
<td><strong>To-Be</strong></td>
<td><strong>Level of operability</strong></td>
</tr>
<tr>
<td>The university will have the resources to conduct appropriate laboratory instruction in genetics.</td>
<td>Universities will partner with higher educational institutions abroad to arrange for support in implementing appropriate instructional laboratories.</td>
</tr>
<tr>
<td>Practical anatomy laboratories will be available for students.</td>
<td>Laboratories will be installed only when the necessary budgets and sustained funding for reagents, supplies, maintenance agreements and equipment replacement are available.</td>
</tr>
<tr>
<td>In cooperation with the LMD and other universities in Afghanistan, the MoHE will advocate for the implementation of practical anatomy laboratories for medical students.</td>
<td></td>
</tr>
</tbody>
</table>
### 3. Training

**As-Is**
Few professors at Afghan universities have been internationally educated in recent years. Most are graduates of Kabul University and no academic advances were made after the Soviet occupation and the following Taliban rule up until 2001. As a result, many graduates of Kabul University have an educational background which effectively has not been updated since the late 1970s.

**Steps for Moving Forward**
The universities will identify and partner with international experts and higher educational institutions to mentor the university staff in:
- Forensics
- Forensic curriculum development
- Modern teaching approaches
- Development of laboratory exercises

**To-Be**
University staff will be properly trained and competent prior to conducting training. They will be appropriately compensated for their work.

### 4. Public Perception

**As-Is**
Employment as a medical examiner is not viewed as a career path of choice, as it lacks opportunities in Afghanistan for gainful employment. Students reported that there is a stigma attached to working with the remains of the deceased.

Autopsies, and specifically dissections, are widely perceived by the public to be against Islamic religious norms, as bodies are believed to have to be left intact prior to burial.

**Steps for Moving Forward**
The MoHE and MoPH will, as part of their forensic strategic initiative, develop information on the different types of forensic careers that stress the importance of these careers in society.

The MoHE will work with the LMD and the AFSO to encourage internships with these organizations.

**To-Be**
Forensic sciences will be respected as a valid and important science. Opportunities for career development will be created.
### 5. Budget

**As-Is**
A budgeting approach via the central government appears to be a legacy of previous government practices. Despite a ministerial order from the MoHE in 2010, Kabul University reportedly refused to administer its own budget. The reported reason for this refusal was that such a practice would increase administrative duties at the university.

**To-Be**
Individual governmental institutions will be part of a decentralized budgeting process. They will be responsible and accountable for their own budgets.

**Steps for Moving Forward**
The government of Afghanistan needs to continue with the implementation of a decentralized budgeting system.

### 6. Internet Access and Education

**As-Is**
Internet in 2011 was only accessible at one smaller office with a limited number of workstations.

There have been some initiatives to increase access to academic publications, primarily in English, but internet access for students on campus remains limited.10

**To-Be**
The university will make general internet access available to students on campus.

**Steps for Moving Forward**
Increase internet access for students and faculty throughout the campuses by:
- Increasing bandwidth
- Providing wireless internet

### 7. Foreign Support

### As-Is
Relative to financial and development support given to security, law enforcement and judicial sectors, there appears to be very little international support given to higher education/universities in Afghanistan.

At Kabul University, one new facility had been built for the Social Sciences Faculty, donated by the Government of Pakistan.

Donations to the Kabul University Library include:
- The “Lincoln Learning Center” with books in English mainly on US policy, history, and its constitution
- The “German Reading Room” with books in German and English.
- The library of used textbooks in English donated by Loma Linda University which include medical textbooks

Limited funding was reportedly received from the Asia Foundation by various universities. Private universities in Kabul generally all reported not to have received any international developmental aid.

### To-Be
Increased international support for higher education in Afghanistan as a means to provide Afghanistan’s youth with a future.

Increased access to textbooks in Farsi.

### Steps for Moving Forward
During the strategic planning process, the university will develop an initiative for establishing liaisons with outside organizations and promote that investments in higher education are a means to promoting peace and stability in the country.
### 1. Securing Crime Scenes

**As-Is**
AFSO and PHR observed that several mass graves have been disturbed by construction, as they were not secured as a crime scene. This resulted in the destruction and loss of forensic evidence.

There is a need to provide expert forensic support to CID crime scene units throughout Afghanistan. CID crime scene units need the expertise to:
- Properly investigate
- Secure evidence from mass graves

There is a need for a consistent law enforcement response to secure mass graves from destruction.

**To-Be**
Under Article 100 of the CPC, the ANP is obligated to secure and investigate crime scenes. Each province has at a minimum one CID crime scene team that is responsible for securing crime scenes, documentation and collection of evidence and reporting to the judicial authorities.

Graves will be professionally exhumed and remains will be treated with dignity in accordance with existing laws, cultural and religious traditions.

Suspected mass graves will be treated and secured as crime scenes and proper criminal investigations carried out.

While it is a large undertaking, the CID crime scene units and DCT need to be able to fully support a human identification effort.

### Steps for Moving Forward

The MoI will work with the AFSO to establish a Memorandum of Understanding (MoU) citing AFSO as an independent forensic expert organization on mass graves.

The MoI will use AFSO’s independent forensic expertise to develop a standardized approach to:
- Investigate, document and secure mass graves
- Collect evidence from mass graves
- Manage family expectations as to the limits of human identifications in Afghanistan
- Cooperate with AFSO and LMD in responding to mass graves
- Establish standard procedures for culturally and religiously sensitive practices for dealing with remains from mass graves

The MoI, the LMD and AFSO will work jointly to develop the necessary capacity by identifying the necessary resources to properly exhume, document and collect human remains from mass graves.

### 2. Forensic Laboratory Services

**As-Is**
Afghanistan has one forensic laboratory, DCT, situated in Kabul. The MoI plans on establishing a forensic laboratory in Herat.

The DCT needs facilities, supplies, and staff to be able to adequately provide meaningful forensic laboratory services in Afghanistan. Supporting a human identification effort will provide the DCT with valuable experience in preparing to handle complex forensic evidence.

There is a need for inter-ministerial cooperation on the development of forensic laboratory services between the MoI and the MoPH, under which the LMD falls.

**To-Be**
There will be increased collaboration between DCT and the MoPH (LMD) in providing forensic laboratory services.

While it is a large undertaking, the DCT and MoPH (LMD) need to be able to fully support a human identification effort.

### Steps for Moving Forward

The MoI and international stakeholders, supporting the development of forensic laboratory services in Afghanistan, need to establish a functioning central forensic laboratory.

The MoI, with the help of international experts, will conduct strategic planning to include:
- Mission and vision
- Stakeholders needs to include the human identification effort
- Staffing including education and training needs
- Equipment
- Supplies
- Policies and procedures
- Data and sample tracking tools
- Accreditation
- Budgets
- Cooperation with the LMD and AFSO
- Assistance from international organizations
### 3. Equipment and Supplies

<table>
<thead>
<tr>
<th>As-Is</th>
<th>Steps for Moving Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>International Afghan stakeholders located in Afghanistan and different international PRT’s have donated a variety of equipment and supplies to CID crime scene teams and to the DCT. There is a need to coordinate the receipt, storage, and maintenance of these donations. Provisions need to be made to maintain donated equipment to ensure it does not breakdown.</strong>&lt;br&gt;International donors provided training to DCT staff on the operation of instruments, but there is a need to have procedures and protocols in place for operation and maintenance. US contractors attempted to generate equipment and supply lists, based on vendors from the US. However, these lists need to include the sustainability of operations based on regionally available suppliers. There is a need to have provisions for restocking depleted supplies, some of which are not available in Afghanistan. Members of the MoI CID in Kabul were given and trained on a standard approach to documentation methods during PHR’s 2010 training.</td>
<td><strong>The MoI will work with international donors and equipment vendors to ensure that:</strong>&lt;br&gt;◦ Support agreements address training needs&lt;br&gt;◦ The budget includes line items for supplies and ongoing equipment maintenance</td>
</tr>
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<table>
<thead>
<tr>
<th>To-Be</th>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Scientists working on the human identification effort will receive training and have the necessary equipment and supplies to conduct proper forensic analyses.</strong></td>
<td></td>
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</tbody>
</table>
## 4. Training

**As-Is**

The MoI operates the ANPA which trains new recruits as police officers. Educational levels of recruits are generally limited to basic reading, writing, and math skills.

Two instructors at the ANPA were trained in basic human osteology in 2010 by PHR and are founding members of FSO. They are now providing classes on the subject to ANPA recruits.

The German Police Project Training (GPPT), among other training, has provided basic training at the ANPA in crime scene analysis.

On a provincial level, PRT’s have provided training in crime scene processing. There is a need to ensure that provided training and equipment is consistent throughout the different crime scene teams in Afghanistan.

There is a need for additional training of crime scene technicians throughout Afghanistan to standardize approaches to documenting, securing and addressing mass graves in Afghanistan.

Forensic laboratory training is conducted on a part-time basis under the Afghan Criminal Techniques Academy (ACTA), which is a forensic training laboratory designed and equipped under the JCIP training initiative by the US Army and is located in Bagram. The training has been challenging for numerous reasons, including:

- Foreign instructors are located at secure facilities at JCIP, which requires trainees to commute from Kabul. Effectively, this limits training to two days a week.
- Translations typically limit effective training time.
- Students do not have the appropriate prerequisite educational training background in science.
- JCIP is to be handed over to Afghan authorities in 2014, and contracts with trainers will end in 2013.
- The MoI does not have equipment at the DCT to practice in or implement its own laboratory environment.
- It is difficult to obtain the reagents and supplies required to conduct hands-on training.

**Steps for Moving Forward**

ANPA instructors will participate in advanced training on mass graves provided by the AFSO.

The MoI will work with AFSO to ensure that members of CID crime scene units throughout Afghanistan participate in AFSO specialized forensic training sessions on mass graves.

Conduct internationally led training for forensic laboratory analysts as outlined below in the Foreign Support section.

**To-Be**

The ANPA will continue to offer training on mass graves to ANP recruits. AFSO members instructing these classes will have the requisite skills and knowledge to continue to enhance their curriculum.

The MoI CID will have internal training for crime scene analysts based on established protocols and procedures. Addressing mass graves as crime scenes will be done in collaboration with AFSO.
### 5. Foreign Support

<table>
<thead>
<tr>
<th>As-Is</th>
<th>Steps for Moving Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is a need to ensure that international support initiatives in forensic science are coordinated and are not sporadic. Historically these donations have often been focused on technical equipment, and do not adequately address overall sustainability.</td>
<td>For foreign forensic training and support to be effective in the long term, the MoI needs to provide the foreign support agencies and organizations with a copy of their strategic plan so that support efforts can be coordinated. The support efforts will include:</td>
</tr>
<tr>
<td>Foreign support is most effective when it is coordinated and focused on long-term sustainability. There is a need for a strategic plan to coordinate foreign technical support.</td>
<td>◦ Costs for long-term mentorship by professional forensic scientists with internationally recognized experience in their field</td>
</tr>
<tr>
<td>To-Be</td>
<td>◦ Educational assessment of staff prior to developing and implementing forensic training</td>
</tr>
<tr>
<td>Foreign support in forensic training will be coordinated and standardized for all forensic analysts in Afghanistan.</td>
<td>◦ Collaborations with universities in developing educational programs</td>
</tr>
<tr>
<td>Equipment will be purchased based on sustainable maintenance contracts through accessible vendors in neighboring countries (e.g., Pakistan, India).</td>
<td>◦ Costs for a permanent internal “train the trainer” training</td>
</tr>
<tr>
<td>Long-term sustainability will be achieved by promoting sound scientific education at universities.</td>
<td>◦ Equipment maintenance and supply costs prior to equipment purchase</td>
</tr>
<tr>
<td>Updated training curriculum will incorporate lessons learned from past trainings in Afghanistan.</td>
<td></td>
</tr>
</tbody>
</table>

### 6. Procedures

<table>
<thead>
<tr>
<th>As-Is</th>
<th>Steps for Moving Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>The CID crime scene teams and the DCT both need documented protocols and procedures to guide their human identification efforts.</td>
<td>As part of the AFSO/MoI MoU, CID crime scene teams will cooperate with AFSO to develop protocols and procedures regarding the documentation, exhumation, and analysis of skeletal remains from mass graves in Afghanistan.</td>
</tr>
<tr>
<td>To-Be</td>
<td></td>
</tr>
<tr>
<td>The CID crime scene teams will have protocols and procedures on standard responses to mass graves. The DCT will not commence testing until validated protocols are in place.</td>
<td></td>
</tr>
</tbody>
</table>

### 7. Public Perception

<table>
<thead>
<tr>
<th>As-Is</th>
<th>Steps for Moving Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>The public confidence in the ANP is undermined by the difficulties in providing security, effective law enforcement and judicial services. There is a need for a capable independent organization to address the concerns of all victims equally regarding mass graves in Afghanistan.</td>
<td>AFSO, as an independent NGO provider of forensic expertise, will provide expertise to CID crime scene units throughout Afghanistan to establish credibility in responding to reports of mass graves.</td>
</tr>
<tr>
<td>To-Be</td>
<td></td>
</tr>
<tr>
<td>The public will view CID crime scene units as professional and effective in the provision of law enforcement services.</td>
<td></td>
</tr>
</tbody>
</table>
1. Jurisdiction

**As-Is**

The Forensic Medicine Law enacted in 2008 is the primary legislation governing forensic medicine in Afghanistan.\(^\text{11}\) It provides for the establishment of the LMD. The law was enacted under Article 31 of the Public Health Act\(^\text{12}\) in order to arrange forensic medicine services and to better implement justice when a professional opinion is expressed on criminal and civil cases through judicial bodies to departments providing forensic services.\(^\text{13}\)

Under Article 2 of the law, the Department of Forensic Medicine operates on the basis of the following objectives:
- Provision of medical facilities to judicial bodies for finding out the truth
- Performance of forensic medicine skills
- Developing training and research programs

The law is comprehensive in laying out the LMD’s objectives.

**Steps for Moving Forward**

The LMD will undertake a public awareness campaign to promote the:
- Importance of forensic medicine for the administration of justice
- Mandate of LMD, as provided for in the Forensic Medicine Law
- Need for impartial respect for the findings of the LMD in all cases
- Limits of forensic medicine

Roundtables with other justice system stakeholders such as police, judges, prosecutors and defense counsel to:
- Discuss ways of working together better on cases involving forensic medicine issues
- Build trust and mutual respect between the LMD and other justice stakeholders

Increase opportunities for further study and training abroad to LMD staff to further professional development.

**To-Be**

The Forensic Medicine Law and the role of the LMD will be understood, respected and implemented by the full range of actors in the justice system and the general public.


Table 13. Art 1.
2. Resources

<table>
<thead>
<tr>
<th>As-Is</th>
<th>Steps for Moving Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>The LMD is situated under the MoPH. Medical examiner offices/facilities are planned for Jalalabad and Herat. A total of 34 provinces are divided into seven regions which fall under the LMD’s jurisdiction.</td>
<td>As part of an overall effort at modernizing the LMD will develop a strategic plan which will outline the steps to:</td>
</tr>
<tr>
<td>A medical doctor heads the LMD. In Kabul, the LMD has a total of 23 medical doctors on staff, 11 of whom are female. These female doctors primarily attend to examinations of women.</td>
<td>▪ Implement an internal training program focused on standardizing medical examiner services across Afghanistan</td>
</tr>
<tr>
<td>The Herat office has seven doctors on staff, one of whom is female. It is important to note that many doctors are also employed outside of the LMD, such as in hospitals or private clinics.</td>
<td>▪ Implement practices which are scientifically valid and follow internationally recognized standards</td>
</tr>
<tr>
<td>Medical doctors from hospitals or private clinics are contracted to perform postmortem examinations in these seven regions. These doctors, however, are not trained in forensic pathology and tend to have other medical responsibilities (e.g., hospitals and/or private clinics). This impacts the autonomy and independence of the doctors.</td>
<td>▪ Standardize quality of medico-legal service across Afghanistan</td>
</tr>
<tr>
<td>The Kabul LMD has full-time medical doctors at a facility dedicated to medico-legal examinations.</td>
<td>▪ Identify which forensic laboratory services need to be outsourced until the necessary supporting infrastructure in capacity and equipment is reached</td>
</tr>
<tr>
<td>Some cases are transported from the regional offices to Kabul for postmortem examinations. This creates chain of custody issues. There is a need to have a clear process on which cases are selected for examinations at the Kabul LMD or procedures on how to transport and transfer material.</td>
<td>▪ In cooperation with the MoI’s DCT, identify which forensic laboratory services need to be carried out at an LMD laboratory, such as:</td>
</tr>
<tr>
<td>Jurisdiction in Afghan law is also time sensitive. Under Article 25 of the Forensic Medicine Law, the LMD has three days to conduct its examination and diagnosis and send the results to the relevant authority. There is a provision for the Head of the Department, or provincial heads of department, to extend this to a maximum of 45 days in complex cases or where there are technical and administrative problems. A written report justifying the extension of time is to be sent to the relevant authorities. Due to these time limits, the LMD is expected to present expedient reports and results, which is often not possible.</td>
<td>▪ DNA</td>
</tr>
<tr>
<td>There is a need for inter-ministerial cooperation on the development of forensic laboratory services between the MoI and the MoPH, under which the LMD falls.</td>
<td>▪ Toxicology (e.g., blood alcohol, controlled substances/drugs, etc.)</td>
</tr>
<tr>
<td>▪ Develop written standard protocols and procedures governing:</td>
<td>▪ Develop operational budget to include:</td>
</tr>
<tr>
<td>• Postmortem examination of human remains</td>
<td>• Staffing</td>
</tr>
<tr>
<td>• Medico-legal examination of torture (which includes sexual violence)</td>
<td>• Equipment &amp; Maintenance</td>
</tr>
<tr>
<td>• Scientific identification of human remains</td>
<td>• Supplies</td>
</tr>
<tr>
<td>• Age determinations</td>
<td>• Training</td>
</tr>
<tr>
<td>• Chain of custody of physical evidence</td>
<td>• Partner with AFSO to develop necessary forensic anthropology support and awareness raising campaigns/workshops regarding to mass graves.</td>
</tr>
</tbody>
</table>
To-Be
To ensure a consistent level of medico-legal services across Afghanistan, training, procedures and protocols, as well as information management will be centralized.
The LMD will be given the authority to determine the time necessary to conduct its medico-legal examinations and generate reports.
The LMD will have the necessary resources to support full-time medical examiners.
The LMD will have an agreement with AFSO to provide forensic anthropology expertise.

3. Services
As-Is
There is a need for standard procedures on medico-legal examinations. Autopsies rarely include internal examinations.
There is a need to adhere to international standards (Minnesota Protocol).14
The following services are provided by the LMD:
◦ Postmortem examinations (mainly external)
◦ Age determination15
◦ Hymen examinations to determine “virginity”
◦ Blood alcohol testing
◦ Toxicological exams
◦ Determination of whether a bone is human or not (e.g., animal)16
Paternity tests based on ABO blood typing were suspended as the former head of the LMD felt that they lacked specificity.
There is a need to ensure that postmortem examinations include internal examinations and comply with internationally recognized standards (Minnesota Protocol17). The services provided need to follow internationally recognized standards.
In some instances current protocols are unscientific, for example:

Steps for Moving Forward
The LMD will enter into agreement/contract with a forensic pathologist(s) with internationally recognized experience in this field. The selected pathologist(s) will:
◦ Assist in the development of the LMD strategic plan, which focuses on:
  • Long-term operations
  • Design and implementation of procedures and protocols
  • Gradually establishing DNA testing and analysis
  • Modern and scientifically acceptable toxicological services
◦ Develop and provide necessary training of trainers to establish internal and external (i.e., universities, judiciary and law enforcement) training programs
◦ Provide mentoring for case work

Table 15. There is no provision in the law to record births in Afghanistan. As a consequence, for the great majority of the population there are no birth certificates. For criminal prosecutions, age determination is an important service provided by the LMD to determine whether a suspect was under the age of 18 (adult) when the crime was committed.
Table 16. One of the medical doctors is a member of FSO and participated in PHR’s human osteology training in 2010.
Hymen examinations are conducted as a confirmatory test for sexual intercourse. Blood alcohol is detected using a test dating back to the late 1960s. Toxicological tests in cases of suspected poisoning are investigated by feeding the decedent’s stomach contents to a rabbit and evaluating the health of the rabbit. Age determinations are based on inappropriate population data.

There needs to be a capacity to carry out scientific based human identifications.

The LMD will have the required resources to adopt and fully implement internationally accepted forensic practices, including written standard protocols and procedures, governing the medico-legal examination of human remains. The LMD will have operations that produce sound forensic results. The LMD will work toward implementing ISO 17025 accredited laboratory operations.

4. Public Perception

LMD reports are issued to the prosecution and the ANP. These are often reportedly misunderstood and/or misinterpreted by prosecutors, judges, and attorneys. Additionally, the reports do not meet the expectations of prosecutors and judges. For example, they expect definitive results, such as exact age determinations rather than age ranges. Only age ranges are scientifically possible to report. The majority of the criminal justice community in Afghanistan has yet to understand the limits of forensic medicine.

Steps for Moving Forward

Based on the strategic plan, the LMD will develop awareness raising training for:
- Attorneys and judges
- CID personnel from the MoI
- The general public

LMD awareness raising will include information on:
- Services provided
- Existing limitations (technical and scientific)
- Limitations in science

Table 18. An intact hymen is not a reliable indicator of whether a female has been vaginally penetrated through sexual intercourse. Tearing of the hymen can also be an indicator of other types of injury or involuntary acts, such as accident or rape. Some women have no hymen, or it is vestigial, that it isn’t affected by sexual intercourse.

Table 19. It is a qualitative test based on a color change, which is confirmatory for the presence of alcohol.
5. Facilities

<table>
<thead>
<tr>
<th>As-Is</th>
<th>Steps for Moving Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>The LMD moved into a new facility in 2009-2010. The building is functional for small-scale medical examiner operations. The building included an autopsy theater with two fixed tables and several coolers that can hold a small number of bodies. Administrative offices were located in the same building. Electricity was dependent on available city power. The LMD needs space and appropriate facilities to handle long-term storage of human skeletal remains. Currently, the remains are commingled and stored in burlap bags. While the Medical Examiner’s office has some limited laboratory equipment, much of it is insufficient and outdated.</td>
<td>Evaluate and incorporate facility requirements as part of the LMD strategic plan. This includes:  ◦ Developing a training plan commensurate with equipment needs  ◦ Identifying laboratory and storage space for processing and storing human skeletal remains</td>
</tr>
<tr>
<td>To-Be</td>
<td></td>
</tr>
<tr>
<td>The LMD will have laboratory equipment and supplies necessary to provide comprehensive medico-legal services. LMD facility requirements will be evaluated as the operations expand.</td>
<td></td>
</tr>
</tbody>
</table>
### 6. Staff and Training

#### As-Is

The LMD needs to employ trained forensic pathologists. Most of the doctors have general medicine degrees from the University of Kabul. Medical doctors at the LMD need training in forensic science. Medical doctors at the LMD need training to conduct autopsies or examinations on human skeletal remains according to internationally recognized standards (Minnesota Protocol).

There is a need to employ forensic anthropologists at the LMD.

There is a need to develop training programs in forensic science and forensic pathology.

#### To-Be

The LMD will have medical examiners who are able to implement internationally recognized protocols (Minnesota Protocol) and procedures for medico-legal examinations.

The LMD staff will have the necessary education and training to conduct appropriate and meaningful forensic investigations.

The LMD will work with FSO in addressing mass graves and the analysis of skeletal remains.

#### Steps for Moving Forward

The LMD will include the development of key sustainability factors in training in its strategic plan, such as:

- The development of the following for forensic pathology:
  - An internal training program to begin implementation of the Minnesota Protocol
  - A residency program to train forensic pathologists/medical examiners
  - An external training program in forensic pathology/death investigations to enhance:
    - University educational resources at the Faculties of Medicine
    - Training at the ANP Academy
    - Training for the judiciary (attorneys, judges, law enforcement)
- The development of the following for laboratory operations:
  - Training in ISO 17025 accreditation
  - Ability to follow international standards in toxicology and DNA
  - Working with the MoI and MoHE to hold sessions on technical topics including:
    - Equipment maintenance and troubleshooting
    - Resolving complex cases
    - New topics and research papers
- The LMD and FSO will establish an MoU with FSO to:
  - Allow for the FSO to provide forensic expertise in the exhumation and analysis of human skeletal remains
  - Establish the necessary jurisdiction under the Forensic Medicine Law for FSO
  - Collaborate in establishing protocols and procedures
  - Coordinate forensic training
  - Coordinate public awareness raising campaigns
### 7. Procedures

<table>
<thead>
<tr>
<th>As-Is</th>
<th>Steps for Moving Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>The LMD needs standardized protocols and procedures governing the medico-legal examination of human remains.</td>
<td>The LMD will enter into an agreement/contract with a forensic pathologist(s) who has internationally recognized experience in this field and who will assist in developing the necessary protocols and procedures.</td>
</tr>
<tr>
<td>There is a need for standard procedures on medico-legal examinations. Autopsies rarely include internal examinations. To date, the LMD does not adhere to international standards (Minnesota Protocol).</td>
<td></td>
</tr>
<tr>
<td>There is a need to conduct examinations and develop reports with proper scientific background and protocols.</td>
<td></td>
</tr>
<tr>
<td>There is a need to carry out standard laboratory examinations (toxicology, histology, biology) in accordance with internationally recognized standards.</td>
<td></td>
</tr>
<tr>
<td>There is a need for qualified forensic pathologists and forensic anthropologists to support the examination of human remains.</td>
<td></td>
</tr>
</tbody>
</table>

**To-Be**

The LMD will have operations to produce sound forensic results. The LMD will have the required resources to adopt and fully implement internationally accepted forensic testing procedures including written standard protocols and procedures governing the medico-legal examination of human remains.

### 1. Public Perception

<table>
<thead>
<tr>
<th>As-Is</th>
<th>Steps for Moving Forward</th>
</tr>
</thead>
</table>
| In Afghanistan the public considers autopsies, which in standard practice include the internal examinations of bodies, against Islamic doctrine. Medical doctors who intend to carry out internal examinations as part of an autopsy are required to get permission by the decedent’s family to do this. A court order is required in cases where internal examinations are conducted without family permission. This has reportedly led to threats being made against the doctors of the LMD by families who did not agree with internal examinations. The LMD reports the results of their examinations to the prosecution and the ANP. LMD staff members are concerned for their safety, as they felt that their reports were being perceived as being prosecutorial, rather than factual. The LMD needs to develop an awareness raising campaign. | The LMD will develop a public awareness and outreach campaign, informing the public on the LMD’s independent nature, the services it provides and the benefits of using science to determine fact within the law. This needs to address cultural and religious sensitivities by engaging:  
- Religious leaders  
- Community elders  
- Judges and attorneys  
- Educators  
- Law enforcement officers |
| The Afghan public will have an understanding of the LMD’s role and mission as a non-biased, fact-finding, scientific institution within the Afghan judiciary. The forensic reports issued by the LMD will be factual and will be valued by the public. |  |
### 8. Budget

**As-Is**

The LMD did not have an institutional operating budget. Budgeting is centralized and line items (such as a broken window) had to be approved by the MoPH on a case-by-case basis.

Since 2010 there have been discussions on institutional budgeting. This has yet to be fully implemented.

**Steps for Moving Forward**

Development of an institutional operational budget based on the LMD's strategic plan (see LMD Resources above).

**To-Be**

The LMD will have an institutional operational budget commensurate with operations. The LMD management will have the authority to appropriate the budget and will be held accountable for the spending.

### 9. Information Management

**As-Is**

Reporting is tracked and processed through a paper-based bureaucracy. Even though computers are utilized, they function little beyond word processing and basic internet use (i.e., email).

An appropriate tracking system will need to be implemented if the LMD is to undertake a human identification initiative.

**Steps for Moving Forward**

Establish a data management approach that supports the LMD mission and goals cited in the strategic plan.

**To-Be**

The LMD will have the appropriate tracking systems commensurate with developing operations.

### 10. Foreign Support

**As-Is**

The LMD has received sporadic foreign support including:

- Remote Medical Solutions International (RMSI) provided technical equipment to conduct autopsies and embalming
- PHR provided training and a professional camera kit to LMD staff
- PRT in Herat has provided the funds to build a medical examiner facility
- Turkish and British DVI Teams and a representative from the US Federal Bureau of Investigation (FBI) provided support in the identification of the victims of the Pamir Airline crash that occurred in May of 2010

Foreign support is most effective when it is coordinated and focused on sustainability. There is a need for a strategic plan to coordinate foreign technical support.

**Steps for Moving Forward**

The strategic plan will identify the level of forensic services to be provided by the LMD and that which will be provided by the DCT.

Funding for the development of forensic services will be allocated according to the strategic plan.

(To-Be on next page)

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Table 20. Repatriation of remains of foreigners who die in Afghanistan requires autopsies and embalming. To comply with this regulation, RMSI reportedly donated equipment to the LMD.

Table 21. Lacking the necessary political will and technical infrastructure in Afghanistan, human identifications of skeletal remains from mass graves done with the support of DNA analysis will be only possible on a very limited scale, if funding is made available for this. Under the current circumstances it is not possible as a nationwide initiative.
<table>
<thead>
<tr>
<th>To-Be</th>
<th>Foreign technical support will be coordinated via a strategic plan by the LMD.</th>
</tr>
</thead>
</table>

11. **LMD Laboratory Operations**

**As-Is**

The LMD has a desire to conduct DNA testing and develop an ISO 17025 accredited laboratory.

The LMD needs a sound plan, which will include the acquisition of proper facilities, equipment, supplies, and trained staff.

An incremental approach is needed for the development of sustainable laboratory operations as it is time consuming and requires operable equipment and supplies and trained staff.

**To-Be**

The LMD will have the resources (equipment, staff, and supplies) to accurately conduct meaningful DNA analysis for the identification of human remains.

**Steps for Moving Forward**

The LMD will establish a time-phased approach for the developing a DNA laboratory. This approach will include the use of outside laboratories to test the samples as the LMD begins operations. The implementation will include:

- **Phase I:**
  - Planning for laboratory operations including:
    - Equipment
    - Supplies
    - Number and type of staff
    - Information management programs
  - Defining the scope of the necessary outsourcing
  - Training on sample collection

- **Phase II:**
  - Developing contracts for outsourcing of DNA profile extraction
  - Training on DNA profile analysis
  - Beginning the collection of samples

- **Phase III:**
  - Equipping LMD DNA laboratory
  - Performing validation and training
  - Parallel testing of DNA samples in LMD laboratory and contracted laboratory

- **Phase IV**
  - ISO 17025 accreditation

Outside experts will work with the LMD to plan and implement operations.
## Afghan Forensic Science Organization (AFSO)

### 1. Jurisdiction/Mandate

<table>
<thead>
<tr>
<th>As-Is</th>
<th>Steps for Moving Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recognizing the need to protect mass graves, the AFSO was founded in late 2011 by the 18 participants in PHR's 6-week training course. The organization's mission is to protect and scientifically document mass graves and ensure that human remains from mass graves are treated with the necessary cultural and religious sensitivity. Members of the AFSO are comprised of the individuals from: ◦ ANP ◦ MOI ◦ LMD ◦ Ministry of Information and Culture ◦ AIHRC ◦ Civil Society</td>
<td>Implement MoUs with pertinent stakeholders to formalize: ◦ Procedures to obtain jurisdiction ◦ Forensic expertise provided by AFSO ◦ Level of cooperation of staff/personnel, equipment, and materials ◦ Security for: ◦ Staff • Grave sites • Witnesses ◦ Handling and storage of skeletal remains ◦ Repatriation of skeletal remains ◦ Handling and storage of physical evidence ◦ Inclusion of CID crime scene technicians in AFSO trainings</td>
</tr>
<tr>
<td>The team represents one of the few successful collaborations between government and non-government entities in the transitional justice field in Afghanistan. AFSO's main objectives and activities include: ◦ Research and surveying of mass graves throughout Afghanistan ◦ Documenting mass graves through proper forensic methods ◦ Developing a comprehensive database of registered mass graves ◦ Providing access to related training/capacity building to allow for the proper documentation and preservation of mass graves in Afghanistan ◦ Holding workshops around the country to develop and maintain dialogue on truth-seeking and justice issues ◦ Launching public awareness programs to promote civic responsibility, victim’s rights, the role of science in justice, and the need to protect mass graves from destruction ◦ Developing a national strategy for properly addressing past atrocities and preparation for the future ◦ Working toward recovery of the identity of the victims and the circumstances of their deaths in order to bring closure to the families and acknowledge the atrocities that have taken place during past conflicts in Afghanistan</td>
<td>Current political and security conditions are not amenable for a nationwide missing persons initiative. Limited exhumation and forensic anthropology projects might be possible in some accessible areas of</td>
</tr>
</tbody>
</table>

### Jurisdiction/Mandate

1. Jurisdiction/Mandate

- Recognizing the need to protect mass graves, the AFSO was founded in late 2011 by the 18 participants in PHR’s 6-week training course. The organization’s mission is to protect and scientifically document mass graves and ensure that human remains from mass graves are treated with the necessary cultural and religious sensitivity. Members of the AFSO are comprised of the individuals from:
  - ANP
  - MOI
  - LMD
  - Ministry of Information and Culture
  - AIHRC
  - Civil Society

The team represents one of the few successful collaborations between government and non-government entities in the transitional justice field in Afghanistan. AFSO’s main objectives and activities include:

- Research and surveying of mass graves throughout Afghanistan
- Documenting mass graves through proper forensic methods
- Developing a comprehensive database of registered mass graves
- Providing access to related training/capacity building to allow for the proper documentation and preservation of mass graves in Afghanistan
- Holding workshops around the country to develop and maintain dialogue on truth-seeking and justice issues
- Launching public awareness programs to promote civic responsibility, victim’s rights, the role of science in justice, and the need to protect mass graves from destruction
- Developing a national strategy for properly addressing past atrocities and preparation for the future
- Working toward recovery of the identity of the victims and the circumstances of their deaths in order to bring closure to the families and acknowledge the atrocities that have taken place during past conflicts in Afghanistan
- Current political and security conditions are not amenable for a nationwide missing persons initiative.

Limited exhumation and forensic anthropology projects might be possible in some accessible areas of Afghanistan.

### Steps for Moving Forward

Implement MoUs with pertinent stakeholders to formalize:

- Procedures to obtain jurisdiction
- Forensic expertise provided by AFSO
- Level of cooperation of staff/personnel, equipment, and materials
- Security for:
  - Staff
    - Grave sites
    - Witnesses
  - Handling and storage of skeletal remains
  - Repatriation of skeletal remains
  - Handling and storage of physical evidence
  - Inclusion of CID crime scene technicians in AFSO trainings
As-Is (continued)

Other possible exhumations of mass graves include those with skeletal remains that are in danger of being disturbed through construction projects. In these cases, the focus will be securing information and evidence and providing the human remains (which may not be identified) with a dignified burial.

While the CPC and the Forensic Medicine Law provide definitions of expert witnesses, there is a need for AFSO to be recognized as such an organization within Afghan law.

While authorities have been included and informed of AFSO’s activities, there is a need for a formalized channel to provide its forensic reports with recommendations on the proper investigation and protection of mass grave sites generated by AFSO to judicial and law enforcement authorities.

To-Be

AFSO will be nationally and internationally recognized as the independent non-governmental forensic expert group in Afghanistan. The AFSO will provide governmental judicial institutions with expertise on:

- Documentation of mass grave sites
- Limited exhumation of skeletal remains
- Human identification of skeletal remains
- Forensic anthropology
- Forensic archaeology

To carry out this mandate with full technical, logistical and security support, AFSO will enter into MoUs with the MoI, the LMD, AIHRC and UNAMA to position AFSO as an independent forensic support organization within Afghanistan’s justice system.

AFSO will receive adequate funding and support to bring in international experts to work on specific cases and contribute forensic expertise where requested.
## 2. Staffing

### As-Is
AFSO staff consists of two full-time individuals responsible for managing projects.

AFSO members not employed by the organization are asked to provide support on a case-by-case basis when they are available.

### To-Be
AFSO will have the necessary administrative staff and forensic anthropologists/archaeologists to be sustainable and carry out future projects, including:
- Awareness-raising projects
- Providing forensic expertise to the LMD on received skeletal remains
- Two exhumations per year

### Steps for Moving Forward
AFSO will hire:
- One forensic anthropologist mentor with internationally recognized experience in the field
- One to two technical staff to be trained in forensic anthropology. These staff members could be existing FSO members or other technically qualified persons.
- Communications/Web Director
- Grant Development Administrator
- Database manager
- Support staff

## 3. Services

### As-Is
There is a need for scientific exhumations and dignified burial of human skeletal remains from mass graves in Afghanistan.

AFSO currently provides:
- Documentation of mass grave sites through professional photography, GPS & sketching, and note taking
- Registration and official acknowledgement of the existence of mass gravesites by issuing forensic reports to pertinent authorities
- Identifying whether skeletal remains found by authorities are human or not
- Training and awareness raising on forensic anthropology and mass graves in Afghanistan (ANP and victim groups)

To date, AFSO has documented six mass graves and conducted awareness raising workshops in the following four provinces:
- Mazar
- Kunar
- Bamyan
- Badakhshan

As part of their project plan, AFSO has identified mass graves where access in security and public support might allow for the exhumation of skeletal remains.

*To-Be on next page*
To-Be
AFSO will coordinate with the MoI, the LMD and international forensic experts to provide support in the form of “rescue exhumations” to authorities. This will include exhuming skeletal remains from mass graves in danger of being disturbed due to construction or other factors.

Human remains from mass graves will be treated with the necessary dignity according to cultural and religious norms.

AFSO will expand the scope of their mass grave registry throughout Afghanistan.

4. Facilities and Equipment

As-Is
The AFSO is located in a small office in Kabul. In addition to two laptops, the office has:

- Access to professional grade digital camera equipment through the members who were trained and equipped during PHR’s training in 2010
- Comprehensive training materials in Dari, including:
  - Skeletal collection and documentation forms
  - A model skeleton
  - Osteology textbooks (English)

AFSO is in need of:

- Secure IT and data management
- Exhumation equipment to provide hands-on support to Afghan law enforcement and civil society in addressing mass graves. These graves need to be secured from destruction through either construction or deliberate attempts at destroying evidence.
- Secure administrative space
- Dedicated space for a physical anthropology laboratory
- Appropriate transportation (e.g., 4x4 vehicle, funds for airfares, etc.)

To-Be
The AFSO will have the facility and equipment to support:

- Exhumations, which will include:
  - Data collection and documentation
  - Excavations of human remains
  - Maintaining chain of custody
  - Collection of antemortem data from the missing of exhumed graves
  - Forensic anthropology evaluations in conjunction with the LMD
  - Storage of human skeletal remain

Steps for Moving Forward
The AFSO will develop an operational budget that includes:

- Facilities
- Offices
- Storage
- Reception area for families
- Staffing
- Equipment and Supplies
- Information technology
- Public awareness raising through:
  - Marketing materials
  - Hosting public forums/meetings
  - Media campaigns

Table 22. Possibly in an arrangement with the LMD.
Table 23. Only possible on a very limited scale, where access to the mass grave and victim families is possible from a security perspective.
Table 24. Possibly in an arrangement with the LMD.
5. Internal And External Training

<table>
<thead>
<tr>
<th>As-Is</th>
<th>Steps for Moving Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>AFSO members were trained by PHR in 2010 and are proficient in:</td>
<td>Implement a forensic anthropologist mentor program, so that AFSO staff and members receive advanced forensic training in:</td>
</tr>
<tr>
<td>◦ Forensic documentation methods (photography, sketching, and note taking)</td>
<td>◦ Analysis of skeletal remains</td>
</tr>
<tr>
<td>◦ Identifying skeletal elements as human vs. nonhuman</td>
<td>◦ Human osteology</td>
</tr>
<tr>
<td>◦ Identifying individual human skeletal elements</td>
<td>◦ Archaeology</td>
</tr>
<tr>
<td>◦ Basic skeletal exhumation techniques</td>
<td>◦ Antemortem data collection</td>
</tr>
<tr>
<td>◦ Basic forensic reporting skills</td>
<td>◦ Report writing</td>
</tr>
<tr>
<td>AFSO needs advanced training in:</td>
<td></td>
</tr>
<tr>
<td>◦ Forensic analysis of skeletal remains</td>
<td>This training will be delivered in conjunction with</td>
</tr>
<tr>
<td>◦ Human osteology</td>
<td>“hands-on” training during an exhumation of skeletal remains and their forensic analysis.</td>
</tr>
<tr>
<td>◦ Forensic archaeology</td>
<td></td>
</tr>
<tr>
<td>◦ Antemortem data collection</td>
<td></td>
</tr>
<tr>
<td>◦ Forensic report writing</td>
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</tbody>
</table>

To-Be

AFSO staff and members will receive advanced training in forensic:

◦ Analysis of skeletal remains
◦ Human osteology
◦ Archaeology
◦ Antemortem data collection
◦ Report writing

6. Procedures

<table>
<thead>
<tr>
<th>As-Is</th>
<th>Steps for Moving Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>During the 2010 PHR training, members of AFSO were provided with and implemented:</td>
<td>AFSO will exhume a mass grave and develop written procedures and protocols on mass grave exhumations in Afghanistan. Procedures and protocols will include:</td>
</tr>
<tr>
<td>◦ Evidence documentation forms</td>
<td>◦ The feasibility of conducting an exhumation that meets the criteria necessary in order to properly exhume a grave.</td>
</tr>
<tr>
<td>◦ Skeletal exhumation forms</td>
<td>◦ The involvement of governmental authorities</td>
</tr>
<tr>
<td>◦ Skeletal inventory forms</td>
<td>◦ The involvement of local stakeholders and authorities</td>
</tr>
<tr>
<td>There is a need for written protocols and procedures governing:</td>
<td>◦ Interaction with victim families and managing their expectations</td>
</tr>
<tr>
<td>◦ Exhumation of skeletal remains</td>
<td>◦ Criteria required for moving forward with the scientific identification process</td>
</tr>
<tr>
<td>◦ Collection of antemortem data</td>
<td></td>
</tr>
<tr>
<td>◦ Data management and security</td>
<td></td>
</tr>
<tr>
<td>◦ Reporting to national judicial stakeholders</td>
<td></td>
</tr>
<tr>
<td>◦ International reporting</td>
<td></td>
</tr>
<tr>
<td>There is a need for security risk management protocols to address:</td>
<td></td>
</tr>
<tr>
<td>◦ Feasibility of exhuming individual mass graves</td>
<td></td>
</tr>
<tr>
<td>◦ Presence of international mentors (e.g. forensic anthropologist/pathologist)</td>
<td></td>
</tr>
</tbody>
</table>

To-Be

AFSO will have written procedures and protocols governing the exhumation of mass graves in Afghanistan.

Table 30. Competency was demonstrated by the successful completion of competency exams issued by PHR.
### As-Is

Security concerns and the lack of stability in providing government services continue to challenge the confidence the Afghan public has in its judicial institutions and law enforcement agencies. This is a result of the past and current conflict.

There is a need to establish a bridge between governmental institutions and individuals affected by Afghanistan’s past conflicts. Such a relationship will begin to develop increasing confidence in a future where government will be able to provide security and stability.

Through its awareness raising workshops and as an independent, nongovernmental organization, the AFSO has proven over the past year, the ability to begin bridging the gap between local stakeholders and victims, as well as Afghanistan’s judicial institutions.

AFSO has conducted awareness raising in four provinces, informing judicial, law enforcement, community leaders, clerics, victims, and human rights groups about:
- The need to protect and secure mass graves
- Provisions in Afghan and Sharia law on the protection of gravesites
- The role of forensic science in truth seeking

There is a continued need for awareness raising on science and truth seeking for:
- LMD staff
- Judges, prosecutors, and law enforcement
- Civil society

Awareness raising needs to address:
- The use of science to determine the truth
- Limits of age determinations
- Limits of hymen examinations as an indicator of sexual intercourse in females
- Limits of human identifications in Afghanistan

### To-Be

The Afghan public and governmental institutions will recognize AFSO as an independent organization providing objective and scientific expertise on mass graves and physical evidence. It will establish itself as a clearinghouse on forensic expertise in Afghanistan.

### Steps for Moving Forward

AFSO needs to continue to:
- Engage the public on local levels through awareness raising workshops
- Develop media campaigns on forensic science and truth seeking
- Work with governmental authorities by developing MoUs on a nationwide and local level
- Getting support from international stakeholders with forensic science, truth seeking, and accountability mechanisms
## 8. Budget

<table>
<thead>
<tr>
<th>As-Is</th>
<th>Steps for Moving Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>AFSO was funded through a seed grant under the PHR project and is in the need of continued funding to implement existing project plans. Current funding for the AFSO ends in April 2013.</td>
<td>Implement /develop a strategic plan for continued operations and support of forensic operations. This plan will be developed in conjunction with outside experts and will include the AFSO's:</td>
</tr>
<tr>
<td>To-Be</td>
<td>◦ Mission</td>
</tr>
<tr>
<td></td>
<td>◦ Vision</td>
</tr>
<tr>
<td></td>
<td>◦ Values</td>
</tr>
<tr>
<td></td>
<td>◦ Long term</td>
</tr>
<tr>
<td></td>
<td>◦ Strategic goals/objectives</td>
</tr>
<tr>
<td></td>
<td>◦ Strategy for reaching objectives</td>
</tr>
<tr>
<td></td>
<td>◦ Short term</td>
</tr>
<tr>
<td></td>
<td>◦ Goals and objectives</td>
</tr>
<tr>
<td></td>
<td>◦ Action items</td>
</tr>
<tr>
<td></td>
<td>◦ Key performance indicators</td>
</tr>
<tr>
<td></td>
<td>◦ Financial assessment /budget</td>
</tr>
<tr>
<td>For each of the goals/ objectives the AFSO will conduct action planning to include:</td>
<td>For each of the goals/ objectives the AFSO will conduct action planning to include:</td>
</tr>
<tr>
<td>◦ Desired results</td>
<td>◦ Desired results</td>
</tr>
<tr>
<td>◦ Actions to achieve the results</td>
<td>◦ Actions to achieve the results</td>
</tr>
<tr>
<td>◦ Mitigation strategy for potential barriers to success</td>
<td>◦ Mitigation strategy for potential barriers to success</td>
</tr>
<tr>
<td>◦ Resource requirements</td>
<td>◦ Resource requirements</td>
</tr>
<tr>
<td>◦ Implementation plans</td>
<td>◦ Implementation plans</td>
</tr>
<tr>
<td>◦ Evaluation and progress measurements</td>
<td>◦ Evaluation and progress measurements</td>
</tr>
</tbody>
</table>

## 9. Information Management

<table>
<thead>
<tr>
<th>As-Is</th>
<th>Steps for Moving Forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>Currently the AFSO keeps the data from the mass graves on local computers with informal data sharing to back up information.</td>
<td>The AFSO will develop information technology capabilities to include:</td>
</tr>
<tr>
<td>To-Be</td>
<td>◦ Proper security with a need to know access</td>
</tr>
<tr>
<td></td>
<td>◦ Data backup</td>
</tr>
<tr>
<td></td>
<td>◦ Retrieval and organization of data</td>
</tr>
</tbody>
</table>

To-Be: Appropriate use of information technology will ensure the privacy, integrity, reliability and appropriate use of the data it collects, stores, and reports.
High-level Conclusions and Recommendations

For purposes of this report, a holistic assessment of the situation on the ground throughout Afghanistan reveals that it continues to lack stability, infrastructure, resources, and political will to address human rights and development. This reality, coupled with the after-effects of 35 years of armed conflict within its borders, produce an extraordinarily challenging environment for Afghanistan to move forward in any given arena.

The human identification effort detailed in this report will not be immune from this reality. However, it is the assessment of PHR’s team of experts that, while the challenge is formidable, the recommendations set forth below and in the body of the report as a whole are achievable with the dedicated support of the international community.

While a human identification effort that includes forensic exhumations, DNA sampling and analysis, and autopsies determining cause and manner of death for all of the victims of Afghanistan’s conflict currently aren’t realistic, this should not be taken as a reason to disengage from taking steps addressing Afghanistan’s transitional justice needs.

The following high-level conclusions and recommendations are based on the detailed findings presented in this report’s gap analysis tables. They are:

1. Adequate, reliable and sustained funding is a fundamental requirement underlying the success of any missing persons and human identification effort in Afghanistan. Given that international donors provided approximately 90% of the country’s estimated total public expenditures between 2006 and 2010, it is fair to conclude that the Afghan government will not be able to afford this project without a substantial financial commitment by the international community. The Government of Afghanistan must also prioritize the project financially, if it is to succeed, by bringing its own resources to bear and, additionally, by expanding and subsidizing the continued development of forensics and science in Afghanistan’s academic institutions. Since it will take many years, if not decades, to build and sustain the requisite infrastructure for a viable forensics program, PHR recommends that the Afghan government secure reliable long-term funding dedicated specifically to this endeavor. Concurrently, since time is of the essence given the sensitive nature of most forensic evidence, it is recommended that funding commitments be obtained as soon as possible so that the project can fully launch and the collection of forensic evidence can begin before it is destroyed or its integrity is further compromised.

2. For a successful missing persons and human identification effort to move forward, it is essential that the safety of those reporting information regarding missing persons be guaranteed. Currently, the Afghan Government lacks the ability and capacity to provide for the safety and security of its citizens, and there is no form of witness protection available in the country. As part of a peace building initiative, it is recommended that national and international stakeholders prioritize the creation of a missing persons effort with the special condition that it credibly and realistically provides for the safety and security of all families of the missing and disappeared.

3. If the Government of Afghanistan is going to create an effective and trustworthy victims’ rights process, it is imperative that it implement, subscribe to, and enforce, an internationally recognized legal framework addressing missing and disappeared persons by:
   ◦ Criminalizing enforced disappearances under Afghan law
   ◦ Acceding to and implementing the International Convention for the Protection of All Persons from Enforced Disappearance
   ◦ Drafting and enacting a comprehensive law addressing in detail the rights of the missing and disappeared, as well as the concurrent responsibilities and obligations of the State with reference thereto. It is specifically recommended that the Afghan Government draft this law with the full input and support of the AIHRC. In order for such a law to have the
impact it requires and deserves, it must include an acknowledgement that families have a right to know the truth about the fate of their missing loved ones. It is the responsibility of the State to provide material, financial, psychological, and legal support to the families of missing and disappeared persons. Mechanisms for the provision of said support should be included in the law.

4. The Government of Afghanistan has yet to establish the scope or acknowledge the reality of the missing persons issue in the country in any meaningful fashion. The publication of the AIHRC Conflict Mapping Report constitutes a critical step toward accomplishing both. As it faces many challenges in publishing such a report, the AIHRC should convene a working group to define a comprehensive strategy for its release. This working group should include:
   ◦ Civil society organizations
   ◦ MoJ - Human Rights Unit
   ◦ International stakeholders
   ◦ UNAMA

5. As part of this comprehensive strategy, it is recommended that the working group identify key conditions that must be met to release the Conflict Mapping Report, and define a follow-up strategy and protocol for the preservation and use of the data collected.

6. Afghanistan’s numerous mass graves reportedly contain the remains of victims from decades of past conflicts and human rights violations. The mass grave sites must be protected, preserved, and treated as crime scenes until such time as any and all relevant forensic evidence has been collected from those sites by persons with the requisite professional training. Afghan law currently provides for the protection of mass graves under Article 391(1) of its Penal Code, which makes it an offense to destroy or demolish a grave or tomb without religious grounds to do so. It is strongly recommended that the Afghan government enforce this code provision immediately. Concurrently, it is recommended that the government conduct a country-wide campaign to raise awareness among all of Afghan civil society, the judiciary, and law enforcement of the existence and importance of this law.

7. Central to any missing persons identification effort is the issue of “civil identity”, a concept and practice not commonly utilized in Afghanistan. As a rule, birth certificates, death certificates, marriage certificates, and other civil identity registration documents do not exist for the majority of Afghans. This fact creates enormous challenges in attempting to establish comprehensive and accurate lists of missing and disappeared persons for purposes of their identification. In order for Afghanistan to implement a successful missing persons effort, it cannot be limited to conducting the requisite medico-legal examinations of unidentified remains. The other half of the forensic equation is matching up the results of any given physical examination to a missing person’s “civil identity.” It is therefore recommended that the government create the legal provisions necessary to implement a process for the mandatory registration of civil identity, which must be accessible to all Afghans. In order to do so, the Department of Legislative Drafting (taqnin) of the MoJ should develop legal provisions within Afghan law for the implementation of issuing:
   ◦ Birth certificates
   ◦ Death certificates
   ◦ Civil identity registration

Furthermore, the importance of creating accurate, comprehensive, and nonrepetitive lists of the missing and disappeared in such a project needs to be emphasized. At a minimum, such lists should contain the following identifying victim information:
   ◦ Unique number identifying the victim - reported missing number
   ◦ Full name
   ◦ Father’s name
   ◦ Place of arrest/circumstances under which they went missing
8. There is a paramount need for the establishment of a bridge between the Government of Afghanistan and all those who have been affected by the violence and the human rights violations of Afghanistan’s past and current conflicts. The Afghan government must begin the arduous task of confidence building with its citizens in general and specifically with the families of the missing and disappeared. Although this difficult task is ultimately the responsibility of the Government of Afghanistan, support for such a challenging effort must also come from all sectors of civil society and the AIHRC. In particular, given the AFSO’s credibility as a nongovernmental professional organization with technical expertise specific to the forensic science of mass graves, PHR recommends that this organization play an integral part in this process.

9. AFSO’s mission is to protect and scientifically document mass graves and otherwise ensure that the human remains located therein are treated with requisite cultural and religious sensitivity and respect. During the past year, AFSO has proven its effectiveness in bridging the gap between victims, local authorities and victim groups, and Afghanistan’s judicial institutions by:
   - Documenting mass graves
   - Conducting awareness-raising workshops with victims, local authorities and law enforcement regarding forensic science, existing relevant laws and the importance of securing evidence of mass graves
   - Supporting local authorities by providing forensic expertise on mass graves

In order for the AFSO to continue to develop and support a process by which mass graves and human remains are addressed within the proper legal framework and with scientific expertise and dignity, it is necessary that AFSO:
   - Is recognized by the Afghan judiciary and law enforcement as the independent forensic institution providing expert support on human skeletal remains and mass graves in Afghanistan
   - Receives the necessary international donor support to continue and expand its independent work on mass graves and human skeletal remains and otherwise address the right of victims to know the truth about the fate their loved ones
   - Receives advanced training in forensic exhumation and examination of human skeletal remains
   - Continues to expand its forensic expertise and that of its members by implementing and coordinating forensic training with the support of international forensic experts
   - Continues to raise awareness among Afghan civil society, the judiciary, and all law enforcement communities concerning mass graves and the role that forensic science plays within a historical truth-seeking process.

10. Any sustainable forensic human identification effort must be staffed with personnel who have the relevant educational background in science and who have been trained in forensics. Throughout Afghanistan’s decades of conflict, Afghan scientists and scholars have been isolated from modern education and the academic world. International donors and the Government of Afghanistan should therefore identify and prioritize funding for the increased development of Afghanistan’s higher education system, particularly for those who must necessarily play a role in its forensic future, such as judges, prosecutors, attorneys, scientists and medical professionals.

11. While sophisticated instrumentation and equipment have been donated to laboratories and law enforcement agencies in Afghanistan over the years, most of it has broken down since no logistical or budgetary provisions were made to provide for equipment maintenance or replacement. Forensic laboratories cannot function without working and reliable instruments
and equipment. The Afghan government must prioritize and subsidize the equipment its forensic scientists will use in their human identification effort. Budgetary provisions for repair and maintenance must be included in the subsidy.

12. Historically, international forensic training initiatives encountered numerous obstacles. Future international training initiatives in Afghanistan must:
   ◦ Recognize that the trainees may not have the required educational background to comprehend or benefit from the training. Prior to commencing training, trainees should be evaluated for competency and provided with the appropriate educational foundation if necessary before proceeding with the training
   ◦ Ensure that the staff is provided with an institutional budget, supplies, and resources so it can conduct proper internal practices, proficiency testing, validation, and training
   ◦ Provide for long-term mentorship by trainers for troubleshooting and follow-up support
   ◦ Ensure that trainees who have access to their own equipment and supplies are able to practice what they have learned
   ◦ Ensure that support is provided for equipment sustainability and functionality.

13. In a concerted effort, Afghan forensic institutions, such as the LMD and AFSO, must develop a public awareness and outreach campaign to inform the public of the benefits of using forensic science as a basis for determining the identification of their missing loved ones. This campaign must address and be mindful of cultural and religious sensitivities, and should seek to engage religious leaders, community elders, judges, attorneys, educators, and law enforcement personnel.

14. The LMD, as defined by the Forensic Medicine Law of 2008, is tasked with providing medical facilities to the judiciary when necessary, performing forensic medical procedures as needed, and developing training and research programs. Currently, however, the LMD is limited in its ability to provide such services or is completely unable to do so for the following reasons:
   ◦ The LMD does not employ trained forensic pathologists (most of the doctors have general medicine degrees from the Kabul Medical University and have no training in forensic science)
   ◦ The LMD does not provide expertise in forensic anthropology.
   ◦ Postmortem examinations generally do not include internal examinations and do not comply with internationally recognized standards.
   ◦ Autopsies, which in standard practice include internal examinations of bodies, are considered by the general Afghan public to be contrary to Islamic doctrine.
   ◦ Medical doctors who intend to carry out internal examinations according to international standards are required to get permission by the deceased’s family to do so; that has been problematic in some cases where families did not agree to internal examinations being conducted.
   ◦ LMD reports issued to the prosecution and the ANP are often reportedly misunderstood and/or misinterpreted by prosecutors, judges, and attorneys.
   ◦ The forensic laboratory services provided by the LMD do not follow internationally recognized standards and, in some instances, the LMD does not even adhere to elementary scientific standards.
   ◦ The LMD does not have an institutionalized operating budget.
   ◦ The Afghan government has the responsibility to take all necessary steps to enable the LMD to perform its mandated functions. The LMD should be granted the authority to enter into agreements and contracts with internationally recognized forensic pathologists who will assist in developing a strategic plan for the LMD to address and remedy deficiencies in training, administration, and collateral issues regarding equipment and supply needs. The institutional plan must also include mentoring of casework. PHR recommends that the
LMD collaborate with AFSO to develop the capacity to provide forensic examinations of skeletal remains.

15. DNA testing is a powerful tool for the identification of human remains and must be introduced to Afghanistan to develop basic rule of law capacity. It needs to be recognized that while DNA testing for mass fatality human identification operations is complex and costly, it is also an excellent way of beginning to develop local forensic DNA capacity in Afghanistan. Before any DNA samples are collected from family members, an operational plan must be in place defining the scope of any identification effort and for developing local capacity to conduct the DNA testing according to international guidelines. This plan may include the DNA testing of some limited samples outside of Afghanistan for a short period of time but that should only be undertaken within an effort to develop local sustainable forensic DNA testing capabilities in the long term.

16. The local and global perception of Afghanistan is that it is a culture of impunity for those who violate the law. There is also currently no such thing as equal protection under the law playing out in Afghanistan. It is axiomatic that in order for any transitional justice process to succeed in Afghanistan, such as this Human Identification effort, the precepts of the rule of law must be firmly in place and constitute an integral part of Afghan civil society. Afghanistan has a viable Constitution and many other laws which have been enacted for the good of the country. In the strongest possible terms, PHR recommends that the government of Afghanistan take any and all necessary measures to enforce its current laws equitably, impartially, and transparently, while taking concomitant steps to enact new legislation as recommended in this report. It is only by doing so that the widely-held perception of de facto amnesty and impunity will give way to an Afghan culture of accountability and justice under the law.

The above-referenced conclusions and recommendations are meant to alert Afghan and international stakeholders to the enormous need to develop the field of forensic science in Afghanistan. This report has set out concrete steps by which to do so.

PHR strongly recommends that these steps be taken in order for Afghanistan to embark on a new way forward toward stability, justice, and the right to know the truth through the use of forensic science. Afghanistan’s past three and a half decades of protracted conflict and egregious human rights violations have created a missing and disappeared persons issue on a massive scale. To date, the Afghan government has failed to publicly acknowledge the magnitude of this tragedy. For hundreds of thousands, and potentially millions, of Afghans, the question of what happened to their loved ones remains unanswered.

The Afghan government and Afghan civil society must join together to acknowledge this tragedy, begin a process to locate and identify the missing and the disappeared, including those represented by the human remains found in the many mass graves across the country. Critical to the stability of Afghanistan is the need for a national truth-seeking process and the acknowledgement that “we have all suffered.”

If the human identification effort of the missing and the disappeared at the center of this report is implemented and sustained, Afghanistan’s own forensic scientists and experts will be the backbone of the process.
Appendix A: Existing Documentation Efforts


In January 2005 the decision of the OHCHR not to release a mapping report covering the 1978-2001 period was criticized by the Afghanistan Independent Human Rights Commission (AIHRC), civil society and others. The report was supposed to be released alongside the AIHRC report “A Call for Justice.” Although the OHCHR mapping report was based entirely on existing or open sources, it is still a valuable compilation of existing material, and could have been used to kick start debates about accountability and vetting of the worst perpetrators ahead of Afghanistan’s first parliamentary elections, as well as provide a base from which civil society organizations could begin their documentation efforts. The report was eventually leaked online in 2010.127

Human Rights Watch — Blood Stained Hands

In July 2005 Human Rights Watch (HRW) released its report Blood Stained Hands: Atrocities in Kabul and Afghanistan’s Legacy of Impunity.128 The HRW report documents one single year, the Afghan year 1371 (March 1992-March 1993), the first year of the Kabul civil war and mujahedin rule in Afghanistan. Like the AJP report, the HRW report is based upon interviews with witnesses, victims, and key individuals with inside knowledge of the events of the year 1371. It also named individuals bearing responsibility for the atrocities detailed in the report.

The HRW report did not receive much attention at its release; however, calls for a Special Court for Afghanistan made in December 2006 elicited a response from the former mujahedin commanders which it had accused of atrocities, in the form of a mention in an amnesty resolution passed by the Afghan parliament in early 2007.129


Less than two weeks after the release of the HRW report, the AJP published its report documenting major patterns of abuses during the conflict 1978-2001.130 The AJP report, unlike the suppressed OHCHR report, was based upon documentation on the ground in Afghanistan, primarily through interviewing eyewitnesses, victims, and key individuals, including former combatants. The AJP report also differed from previous human rights reports on Afghanistan by providing analysis of the command structure of various factions, and through that analysis, determination of who should bear individual criminal responsibility for the crimes committed by those factions.

Afghanistan Independent Human Rights Commission Conflict Mapping

In 2005 the Government of Afghanistan launched the Action Plan for Peace, Reconciliation and Justice, a three-year transitional justice action plan with five key actions:

1. acknowledging the suffering of the Afghan people
2. ensuring credible and accountable state institutions
3. truth-seeking and documentation
4. promoting reconciliation and the improvement of national unity
5. establishing effective and reasonable accountability mechanisms

Under key action number three, AIHRC was mandated to “increase and accelerate efforts to document past human rights abuses during the conflict in Afghanistan, including on gender-based violence, to complement and enrich the existing work.”\(^{131}\) It did this in the form of a conflict mapping exercise, interviewing thousands of witnesses across all provinces of Afghanistan in respect to war crimes and crimes against humanity committed from 1978 through 2001. It is by far the most comprehensive documentation of the conflict in Afghanistan undertaken, and promises to distinguish itself from previous documentation efforts both because of its size but also its depth of legal analysis.

This exercise in transparency and accountability has gone through a series of postponements from when it was first scheduled to be released before the 2010 parliamentary elections. Questions remain as to whether the plan will ever be published, and why it has not already been made public. Ultimately, Afghanistan’s past will need to be addressed for it to move forward, and publication of the Conflict Mapping report, a mandated report of the country’s national human rights institution, would make an invaluable contribution.

**UN Women - Oral History Project**

In 2007-2008 the Afghanistan Country Office of UN Women undertook an oral history project in several provinces to document gender-based violence over three decades from 1978-2008. To date this project has not been made public.

**Afghanistan Research and Evaluation Unit (AREU) - Legacies of Conflict Project**

AREU’s research project was carried out in three provinces — Kabul, Ghazni and Bamyan — between October 2009 and December 2011. It focuses on experiences of conflict, dealing with the legacy of conflict and ways forward, and in some respects complements and updates the AIHRC’s *A Call for Justice* report. A number of reports have been produced and published as a result of this project.\(^{132}\)

**Afghan Civil Society Documentation Projects:**

1. **AHRDO - theatre and memory boxes**

   The Afghan Human Rights and Democracy Organization (AHRDO) uses arts-based methods to engage all sectors of Afghan society on issues such as transitional justice, parliamentary democracy, and human rights.\(^{133}\) From 2011 to early 2012 AHRDO designed and implemented the Memory Box initiative, the central objective of which is to collect and exhibit evidence associated with war victims as instruments for reflection and increasing awareness of society and the policy makers.

   The project aims to empower the women victims, to reflect their pains and suffering through objective means, and help incorporate their demands and problems into policy formulation bodies, as well as help link them to the reconciliation process and bridge the future with the past by collecting, protecting, and archiving personal objects, items, and tools related to each individual who has fallen victim in different periods of conflict over the course of the last three decades. Most importantly, the project aims to create space for further discussion of how to deal with past sufferings and promote public awareness in relation to past conflicts for new generations through publications and exhibitions, and to produce the Protection Strategy for the items and objects collected for the Memory Boxes.

   Women victims from Kabul, Kandahar, Maidan Wardak, Nangarhar, Balkh, Bamyan, Laghman, and Parwan provinces participated, and a number of public exhibitions of the memory boxes were held, where booklets and CDs were distributed to be used as educational tools.

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\(^{133}\) See http://ahrdo.org/.
2. **Afghanistan Watch**

The Afghanistan Watch documentation project was undertaken from September 2010 until March 2012, and examined three major incidents: The 24th hoot uprising in Herat in March 1979; the massacre in Afshar during the Kabul civil war in February 1993; and the massacre of civilians by the Taliban during its takeover of Mazar-e-Sharif in August 1998.

The project documented a total of 1500 “individual incidents,” including murder, torture, and rape across the three sites, relying primarily upon victim and witness testimony, but also including the testimony of individuals, such as journalists and those who had key posts which gave them access to information about the incident. Secondary sources such as newspapers and magazines were also used. Although it has published a victims’ consultation undertaken as part of the project, Afghanistan Watch has decided not to publish the results of its documentation project.134

3. **ACSF report**

The Afghan Civil Society Forum (ACSF) is one of the largest civil society networks in Afghanistan with around 450 members and partners, including 80 member organizations, 50 individual members, and around 320 partners. The ACSF has offices in Kabul, Mazar-e-Sharif, Jalalabad, Gardez, Kunduz, and Bamyan. In March 2011, ACSF published its report *A First Step on a Long Journey: How People Define Violence and Justice in Afghanistan (1958-2008)*. Research for the report was conducted over seven months in 2008 in nine provinces: Kabul, Kandahar, Bamyan, Badakhshan, Nangarhar, Paktia, Herat, Balkh, and Faryab. 400 surveys were completed in each province on types of violations, intensity of violence, and perceptions of justice.135

Appendix B: In Search of the Missing

The following are two of the success stories from the Radio Azadi program "In Search of the Missing:"

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**Story 1: A family in Canada finds their father in Iran years after his arrest by the Taliban**

Habibullah was arrested along with many other men and boys by the Taliban in Herat in 1378 (1999-2000). Around 70 of those detained with Habibullah were allegedly summarily executed and the bodies were hung up at intersections around the city. Habibullah, however, was detained until the collapse of the Taliban regime in 1380. Upon his release, he tried desperately to find his family but to no avail. Like many other civilians, Habibullah’s family fled Herat during the Taliban operation. The family went to Iran where they searched for him, asking others whether they had any information, but also to no avail. After some time they migrated to Canada.

It was from Canada that Habibullah’s daughter, Shakila, rang Radio Azadi and left a message to be played on “In Search of the Missing,” as a final attempt to find out what happened to her father. Her message was played and repeated up to ten times throughout the months of September and October 2005. Then, a call was received from Habibullah, now living and working in Mashad, Iran, asking to be put in contact with his daughter. After ascertaining that the individual who responded to the call was in fact the missing Habibullah, the family was reunited with their father via telephone on the program on November 11, 2005.

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**Story 2: Two brothers sent to the Soviet Union as children are reunited after 20 years**

During the regime of Babrak Karmal many Afghan children were sent to the Soviet Union for education and indoctrination. Some were orphans; others were not. A considerable number were sent by force, often without their parents’ consent. Later, after the collapse of the Soviet Union and the coming to power of the mujahedin, some who returned to Afghanistan were killed for being “communist.” With UN assistance, the children, some at risk of deportation, managed to resettle in other countries.

An Afghan journalist called the “In Search of the Missing” program on Radio Azadi on behalf of Khan Agha, an Afghan living in Spain. At the age of five Khan Agha had been sent to a boarding school in Tashkent, Uzbekistan. His brother, Abdurrahim, was sent to Kazakhstan shortly after. Since then, Khan Agha had no news of his family and did not know whether they were even alive.

Shortly after the message was broadcast, a man introducing himself as Abdurrahim left a message saying that Khan Agha might be his brother. After ascertaining that it was his brother, Khan Agha was reunited with his family in Kabul via telephone on the program. A Radio Azadi journalist was at the family home to cover the emotion-filled celebration that followed.
Appendix C: Afghanistan's International Treaty Obligations

Afghanistan is a state party to the following core international human rights treaties:

- *International Convention on the Elimination of All Forms of Racial Discrimination*[^136]
- *International Covenant on Economic, Social and Cultural Rights*[^137]
- *International Covenant on Civil and Political Rights*[^138]
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*[^139]
- *Convention on the Elimination of All Forms of Discrimination against Women*[^140]
- *Convention on the Rights of the Child*[^141]
- *Convention on the Rights of Persons with Disabilities*[^142]

Afghanistan is also a state party to:

- *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*[^143]
- *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*[^144]
- *Geneva Convention Relative to the Treatment of Prisoners of War*[^145]
- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts*[^147]
- *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts*[^148]
- *Non Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity*[^150]
- *Rome Statute of the International Criminal Court*[^151]


[^139]: Opened for signature 12 August 1949, 1465 UNTS 85 (entered into force 26 June 1987) (*CAT*). Afghanistan ratified the CAT on 1 April 1987.


[^141]: Opened for signature 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (*Geneva Convention II*).

[^142]: Opened for signature 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950) (*Geneva Convention III*).

[^143]: Opened for signature 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950) (*Geneva Convention IV*).


[^145]: Opened for signature 8 June 1977 1125 UNTS 609 (entered into force 7 December 1978) (*Protocol II*).


